

Legal Commentary

January 16, 2024

Overview of Policies for Further Opening up the Services Sector in Beijing

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On November 23, 2023, the State Council published the *Official Reply of the State Council on the Work Plan for Supporting Beijing in Promoting the Construction of a Comprehensive Demonstration Zone for Further Opening up the National Service Sector* (the “**Reply**”). The Reply approves in principle the *Work Plan for Supporting the Construction of Beijing’s Comprehensive Demonstration Zone for Further Opening up the National Service Sector* (the “**2023 Plan**”), and provides Beijing’s current round of policies for further opening up the service sector at the highest administrative level. Based on the recent introduction of favorable policy tools to promote further economic recovery, the Reply signals “opening up”, which can be regarded as a clear response to General Secretary Xi Jinping’s oft-mentioned phrase that “the door of PRC’s opening up will not be closed, but will only be wider”. The Reply recites specific tasks to promote a deepening of reform; among these, further opening up fields in the service sector are the most prominent and will be the focus of this article.

Background of the Plan

On the one hand, it goes without saying that the current international environment is complicated and the world economy is sluggish, which has brought many impacts on the development of our country. Although the domestic economy has recovered thanks to a series of economic stabilization measures taken by the CPC and the government and the efforts of the people nationwide, the market demand is still insufficient, and some structural problems are prominent. Recently, the CPC and the relevant authorities have continued to optimize a number of phased policies, studied and promulgated a number of targeted new measures, and actively planned a number of reserve policies, systematically implemented a set of “combined punches” of policies, and continued to consolidate the momentum of China’s economic recovery. The 2023 Plan approved in this Reply can be regarded as a powerful outward punch.

Among the foreign investment access policies and systems currently in place in China, the Special Administrative Measures (**Negative List**) for the Access of Foreign Investments in China (excluding the pilot free trade zones) (the “National Negative List”) and the Special Administrative Measures (Negative List) for the Access of Foreign Investments in Pilot Free Trade Zones (the “**FTZs Negative List**”) applicable to 20 pilot free trade zones in China are the most well-known foreign investment industry policies and systems. Beijing, as the only political center in the country, has a clear strategic position as the capital

city, but its specific industrial policies on foreign investment are easy to be ignored. In fact, based on the strategic position of a capital city, Beijing took the responsibility of serving the national major strategies as the starting point. Beijing’s pilot program for expanding opening up in the service industry was initiated by the Overall Plan of Beijing Municipality for the Comprehensive Pilot Program for expanding opening up in the service industry approved by the State Council on May 5, 2015. On February 22, 2019, the State Council approved the Work Plan for Fully Promoting the Comprehensive Pilot Program for expanding opening up in the service industry in Beijing (hereinafter referred to as the “**2019 Plan**”), and the State Council authorized Beijing to make a breakthrough attempt under the framework of existing foreign investment access policies at that time. In 2020, Beijing’s second version of the Plan (i.e., the Work Plan for Deepening a New Round of Comprehensive Pilot Program for expanding opening up in the service industry and Building a National Comprehensive Demonstration Zone for expanding opening up in the service industry in Beijing, hereinafter referred to as the “**2020 Plan**”) also obtained support from the state level in the aforesaid manner, and the 2020 Plan put forward for the first time the task and requirements of building a national comprehensive demonstration zone for expanding opening up in the service industry. The release of the 2023 program in a specific period of time not only a continuation of the previous pilot expansion, but also a way to specific tasks released a more powerful signal, worthy of our attention.

Key takeaways from the 2023 for foreign investment access in the services sector

The 2019 Plan implemented measures to further open up tourism, telecommunications, accreditation institutions, elderly care, culture and entertainment, and other service sectors. The 2020 Plan further expanded opening up of education and training institutions, telecommunications, culture and entertainment, tourism, elderly care, manufacturing of audio and video products, and other sectors. On this basis, the 2023 Plan will further exert efforts in the following areas, and its spirit can be seen in a review from the development perspective of sorting out the historical context.

I. Telecommunications service sector

Both the 2019 Plan and the 2020 Plan reflect Beijing’s pilot measures for further opening up the telecommunications sector, and the opening-up path of relevant business has gradually been opened up in Beijing on a case-by-case basis. The relevant evolution is shown in the following table:

Plan	Pilot program measures	Territorial scope
2019 Plan	Removes the restrictions on foreign equity ratio in value-added telecommunications services such as store-and-forward services, domestic multi-party communication services, and Internet access services (only applicable to the provision of Internet access services to users)	Demonstration zones and parks for the comprehensive pilot program for expanding opening up in the service sector in Beijing
2020 Plan	Removes restrictions on foreign equity ratio in information services (only applicable to app stores)	Haidian Garden of Zhongguancun National Independent Innovation Demonstration Zone

Plan	Pilot program measures	Territorial scope
	Removes the restrictions on foreign equity ratio in value-added telecommunications services such as Internet access services (only applicable to the provision of Internet access services to users) ¹	Demonstration zones and parks for the comprehensive pilot program for expanding opening up in the service sector in Beijing
	Opens up domestic Internet virtual private network services to foreign investors (with the foreign equity ratio not exceeding 50%)	Demonstration zones and parks for the comprehensive pilot program for further opening up the service sector in Beijing
2023 Plan	Removes the restrictions on foreign equity ratios in value-added telecommunications services such as information services (only applicable to app stores, excluding online publishing services) and Internet access services (only applicable to the provision of Internet access services to users)	<u>Whole of Beijing</u>

As shown in the table above, as compared with the 2019 Plan and the 2020 Plan, there are further changes in the following two aspects of the pilot program in the 2023 Plan:

- The 2023 Plan continues the policy of removing foreign investment restrictions on app stores, but expressly excludes online publishing services. The policy of removing foreign investment restrictions on app stores in the information services sector is consistent with the opening-up policies applicable to the free trade zones provided by the *Opinions of the Ministry of Industry and Information Technology and the People’s Government of Shanghai Municipality on Further Opening up Value-added Telecommunications Services to Foreign Investors in the PRC (Shanghai) Pilot Free Trade Zone*. However, the 2023 Plan expressly excludes “online publishing services”. We understand that the exception here helps to respond to the problem of conflict of foreign investment access when game app stores (such as the Apple App Store and Steam) in the market involve both “information service business” and “online publishing business”, which is a beneficial improvement to the existing policies on foreign investment access for application stores;
- Different from the 2019 Plan and the 2020 Plan, where the pilot policies are limited to pilot demonstration zones and demonstration parks or Zhongguancun Haidian Garden, the 2023 Plan extends the scope of the pilot program to the whole of Beijing (subject to the future provisions of a formal authorization reply issued by the State Council), which is expected to attract more

¹ Although the 2020 Plan does not explicitly provide for this pilot program, as officially authorized by the 2020 Plan pursuant to the Official Reply of the State Council on Approving the Temporary Adjustments to Implementation of Relevant Administrative Regulations and Departmental Rules Approved by the State Council in Beijing on October 8, 2021, this pilot program still remains valid.

foreign-invested enterprises to participate in the pilot program.

II. Health and medical services sector

We note that, unlike the previous two Plans, the 2023 Plan explores new breakthroughs in the existing foreign investment restrictions or prohibitions with respect to medical institutions and stem cells and genes in the health and medical services sector, including “supporting qualified foreign, Hong Kong, Macao and Taiwan doctors to set up clinics in Beijing” and “exploring equity incentives for foreign, Hong Kong, Macao and Taiwan employees of pharmaceutical R&D enterprises in the stem cells and genes fields.”

In terms of medical institutions, according to the national negative list, the pilot zone negative list and the Interim Measures for the Administration of Sino-Foreign Equity Joint Venture and Sino-Foreign Cooperative Joint Venture Medical Institutions, foreign-invested medical institutions in PRC can only be established in the form of equity joint venture and the foreign shareholding ratio cannot exceed 70% (currently, the restriction has been lifted to 90% in only a few regions). Judging from the wording of the 2023 Plan, we understand that this time Beijing has an opportunity to break with the existing foreign investment restrictions for medical institutions, allowing foreign investors to hold a greater proportion, or even 100%, of the shares in domestic medical institutions (provided that the medical institutions are limited to clinics and foreign investors are only identified as “qualified foreign, Hong Kong, Macao or Taiwan doctors”). We have reason to believe that this beneficial move is likely to be a test of the further liberalization of foreign investment policies in the field of medical institutions.

In terms of the field of “stem cells and genes”, subject to the provisions of the national negative list and the pilot zone negative list, both the national negative list and the pilot zone negative list prohibit foreign investment in the development and application of human stem cells and gene diagnosis and therapy technologies. However, the 2023 Plan specifies that it will “explore equity incentives for foreign, Hong Kong, Macao or Taiwan employees of pharmaceutical R&D enterprises in the stem cells and genes fields.” Although the previous two plans have not made such an attempt, it seems that Beijing has chosen to provide equity incentives for foreign, Hong Kong, Macao or Taiwan individuals to break with the above equity ratio restrictions. This measure can be regarded as a pioneer “pressure-bearing test” in this field, and the industry should welcome it and have reason to expect further breakthroughs.

III. Culture and education sector

We noticed that the 2023 Plan also attempts to liberalize the current “access permit” system to a certain extent in the fields of culture and education. For example, it delegates the power to approve foreign-invested enterprises’ establishment of performance venues, entertainment venues, and Internet service venues to the district level, and it supports wholly foreign-owned enterprises’ establishment of vocational skills training institutions. Considering that the restrictions on the proportion of foreign investment in the relevant industries have been relaxed, but there are still corresponding restrictions on approval levels in the relevant industry rules, the 2023 Plan makes corresponding breakthroughs. The comparison between the 2023 Plan and existing rules in the relevant industries is briefly shown in the following table.

Relevant Industries	Industry Regulations	Breakthroughs in the 2023 Plan
Performance venues	Regulations on Administration of Commercial Performances (Amended in 2020) Article 10: The competent department of culture under the State Council shall file an application with the competent department of culture under the State Council if it intends to engage in business activities of commercial performances or the performance venue operator intends to engage in business activities of performance venues.	The approval authority is delegated to the district level.
Entertainment venues	<i>Notice of the Ministry of Culture and Tourism on Adjusting the Approval for Entertainment Venues and Business Premises of Internet Access Services</i> , Article 1:	
Internet Service	Foreign investors are permitted to establish entertainment venues within the territory of the PRC in accordance with the law, and the restriction on the proportion of foreign investment is removed. Foreign investors who intend to engage in business activities of entertainment venues shall file an application with the provincial culture and tourism authorities, and the application materials, establishment conditions and procedures are the same as those for the domestic investors. This provision shall apply mutatis mutandis to the establishment of entertainment venues in the Mainland by investors from Hong Kong Special Administrative Region, Macao Special Administrative Region and Taiwan.	
Occupational Skills Training Institutions	Regulations of the People’s Republic of China on Establishment and Operation of Sino-Foreign Cooperative Educational Undertakings Article 60: Administrative measures on for-profit Sino-foreign cooperative training institutions registered with the market regulator shall be promulgated separately by the State Council. Administrative Measures for Sino-foreign Cooperative Vocational Training Agencies (Revision 2015) Article 11: The establishment of a Sino-foreign cooperative vocational skills training institution shall be subject to the examination and approval by the administrative department of labor and social security of the people’s government of the province, autonomous region or centrally-administered municipality where the institution is to be located.	The 2023 Plan reiterates the 2020 Plan, and it is provided in the Administrative Measures of Beijing Municipality on Establishment of For-profit Foreign-invested Vocational Skills Training Institutions, effective as of 15 August 2022, that the approval authority is delegated to district-level human resources and social security authorities.

The 2023 Plan is a breakthrough in the approval level for the above foreign investment access licensing system, which was not mentioned in the previous two plans, reflecting Beijing’s demonstration and leading role in deepening the new round of reform and opening up of the service industry. Based on our observation, in the field of vocational skills training, in addition to local policies for foreign-invested vocational skills training institutions in Shanghai which clearly vest the approval authority of the district-level human resources and social security authorities, there are also some local authorities trying to delegate such authority. The 2023 Plan also appears to be an active response to such demand from the market players².

IV. Financial service sector

Significantly different from the 2019 Plan and the 2020 Plan, the 2023 Plan for the first time puts forward clear policies and tasks for deepening the reform and opening up of the financial service sector, clarifies the attitude of foreign financial institutions, investors of foreign financial institutions and cross-border financial service providers to apply for financial business in compliance with the statutory forms, and explores specific measures such as supporting insurance asset management companies to issue RMB-denominated asset management products overseas in reasonable scale, supporting venture capital and equity investment institutions to carry out market-oriented cooperation with various financial institutions to provide financing services for investee enterprises, and exploring specific measures such as the establishment of a trust property registration mechanism with the real estate and equity as trust property.

V. Professional service sector

The 2023 Plan makes a breakthrough in China for the first time by “allowing qualified overseas individuals to engage in securities investment consulting and futures trading consulting business”. This initiative not only expands “licensed operation” in these heavily regulated areas, but is expected to recognize persons who have corresponding overseas licenses. It may also break the fixation on “commercial presence”, and make more useful attempts in terms of the physical locations of those who provide business, methods, and other aspects. Such initiatives are also likely to recognize and foster the emergence of more innovative business models in professional financial services – it is foreseeable that a licensed representative person in Hong Kong may soon be able to open a fee-for-service or gratuitous professional service public account to offer securities advisory services, or that a person who has passed the U.S. Series 3 examination may be able to start an advisory business related to futures in Beijing. This contextualized scenario gives us a better sense of the pace of these opening up initiatives.

Conclusion

To sum up, Beijing’s powerful policies for further opening up of the service industry can be regarded as “inside and outside”. Under the current situation, Beijing has shown the intent to further improve on its existing foreign investment policies. It is believed that the release and soon entry into force of the counter-

² Measures for Administration of the Examination and Approval of For-profit Foreign-invested Vocational Skills Training Institutions (Hu Ren She Gui [2021] No.2).

cyclical adjustment policies will give the market a further boost. We should similarly prepare for the arrival of the real spring tide at the end of the cycle.

Important Announcement

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