

China Insight



Shanghai Introduces Policies to Further Promote Foreign Investment

Dear Sir or Madam,

On 12 September 2019, the People's Government of Shanghai Municipality released some opinions to further promote foreign investment. Please find below an overview of the main content.

Kind regards,
CMS, China

On 12 September 2019, the People's Government of Shanghai Municipality released the *Several Opinions on Further Promoting Foreign Investment (Hu Fu Gui [2019] No. 37, the "Opinions")*. The Opinions entered into effect on 16 September 2019. They have the purpose to provide for a smoother implementation of the *PRC Foreign Investment Law ("FIL")* (which will enter into effect on 1 January 2020) and to further enhance the city's opening-up, to promote foreign investment and to protect the interests of foreign investors.

1. Background

The Opinions are based on the following 4 main basis:

- the *FIL* and the Standing Committee of the People's Congress of Shanghai Municipality's *Decision on Several Issues relating to the Implementation of the FIL*;
- regulations issued by the State Council on using foreign investment and improving the business environment in the PRC, such as the *Circular of the State Council on Several Measures concerning the Expansion of Opening-up and the Active Use of Foreign Capital* (Guo Fa [2017] No. 5), the *Circular of the State Council on Several Measures to Boost the Growth of Foreign Investment* (Guo Fa [2017] No. 39) and the *Circular of the State Council on Several Measures Concerning the Active and Effective Use of Foreign Investment to Boost High-quality Economic Growth* (Guo Fa [2018] No. 19);
- former practices and experiences of the Shanghai Government, especially Shanghai's experience with the China (Shanghai) Pilot Free Trade Zone Lingang Special Area;
- surveys made by the Shanghai Government as well as advice and suggestions given by FIEs and chambers of commerce.

2. Main Content

Below is an overview on the key content.

(1) Further Expanding Opening to the Overseas

- The Opinions reaffirm the full implementation of the management systems of pre-establishment national treatment and negative list approach for foreign investment and better protection on foreign-invested enterprises' ("FIEs") entitlement to national treatment as already set out in the *FIL*. No authority in Shanghai municipality shall impose any restriction on the admission of foreign investment which is not included in the negative list, and all authorities shall guarantee national treatment for FIEs.
- For investments in the China (Shanghai) Pilot Free Trade Zone ("FTZ") and China (Shanghai) Pilot Free Trade Zone Lingang Special Area ("Lingang"), certain former requirements, such as on minimum registered capital and the method of investment, shall be eased. Further, certain investment restrictions for foreign investment in some areas such as education and health shall be eased. Specific implementing rules on this, however, have not been released yet.
- Foreign investment in certain key industries, such as for intelligent manufacturing equipment, biomedical pharmacy and high-performance medical equipment, new energy and intelligent network vehicles, energy-saving and environment protection, management of supply chain as well as e-commerce, shall be supported and encouraged by the Shanghai Government. Additional preferential policies may be carried out for these industries later.
- The Opinions also intend to ease or cancel access conditions for financial organizations on the equity ratio of foreign investment. The Shanghai Government encourages the opening up of the finance industry and will promote pilot foreign-invested equity investment enterprises. Foreign-invested equity investment enterprises are enterprises legally incorporated in Shanghai and invested by foreign enterprises or individuals for incorporation of equity investment enterprises by means of sponsorship and/or entrusted equity investment management. In addition, the Administrative Committee of China (Shanghai) Pilot Free Trade Zone Lingang Special Area has also released the *Measures of Lingang Special Area to Support Innovative Development of the Financial Industry* on 20 September 2019, which may lead to free capital flows and free convertibility of currencies in *Lingang*.
- Following the People's Government of Shanghai Municipality's *Several Opinions on Promotion of the Development of Multinational Companies' Regional Headquarters in Shanghai* (Hu Fu Gui [2019] No. 30) and the *Notice on Issuing the Revised Provisions on Encouraging Multinational Companies to Establish Regional Headquarters in Shanghai Municipality* (Hu Fu Gui [2019] No. 31) on 25 July 2019, there shall be lower establishment requirements for foreign-invested companies to apply for the acknowledgement as a regional headquarter. In the near future, additional supportive policies and measures may be expected for regional headquarters to maximize their legitimate rights and interests, and to further exercise their headquarters' functions. For the time being, it is, however, unclear how soon such policies and measures will be issued.

(2) Further Attracting Foreign Investment

- The Shanghai Government intends to establish a "Three Databases and Two Networks" ("三库两网") system, to improve its joint meeting mechanism ("外商投资促进服务联席会议制度") and to set up a "Four in One" investment promotion system ("四位一体"投资促进体系") for provision of comprehensive, full-process, one channel investment promotion services. Upon the establishment the social credit system, FIEs shall further enjoy different benefits regarding their importation of products to China depending on their ranking/scores in the social credit system. It remains to be seen whether in addition to the promised benefits, also sanctions and burdens will be imposed on companies with a lower ranking.
- As set out in the *FIL*, FIEs are supported to expand their financing channels, including but not limited to be listed on one of the Chinese Stock Exchanges and to issue corporate bonds. The Opinions further restate such intention and encourage FIEs to go public on the Shanghai Stock Exchange.
- The Shanghai Government intends to encourage and support foreign start-ups and FIEs to set up innovative companies and service organizations in Shanghai in the high-tech industry. Certain science and technology innovation policies, such as innovation funds for SMEs, technology innovation vouchers and recognition on transformation of high-tech achievements, shall be implemented for qualified FIEs. For certain foreign talents, the Shanghai government also intends to prepare special assistance in accommodation, children's education and medical services. On 20 September 2019, for example, the Administrative Committee of China (Shanghai) Pilot Free Trade Zone Lingang Special Area has already issued the *Circular of Supporting Lingang Special Area to Introduce Foreign Talents* for employers and foreigners in *Lingang*.

- FIEs shall operate in compliance with Chinese laws and regulations. However, minor misconducts of FIEs shall be tolerated. How this will be implemented in connection with the social credit system remains to be seen.
- Long-term mechanisms for communication between the government and enterprises such as a roundtable conference shall allow the Shanghai government to get more advice and suggestions from FIEs and to help solve their problems encountered during their production and operation activities.

(3) Further Protecting the Legitimate Rights of Foreign Investors

- The Shanghai Government promises to ensure fair treatment for both domestic-invested and FIEs. This shall especially apply regarding the acquisition of human resources, funds, land use rights and natural resources as well as funds from the government, supply of land, tax incentives, reduction of fees, approvals, standard setting, project declaration and government procurement. New regulations on FIEs shall be subject to the advice and suggestions from FIEs and chambers of commerce. New regulations shall neither impair the FIEs' legitimate rights nor create any extra obligations to such FIEs.
- FIEs shall not be restricted by any authority neither in their daily operations nor in cross-district operations, relocations and de-registrations. Further, in accordance with the law, foreign investors shall be entitled to freely transfer to and out of the PRC contributions, profits, capital gains, income from asset disposals, royalties for intellectual property rights, lawfully obtained compensations or indemnities, income from liquidation, etc. in RMB or foreign currencies.
- It is intended to improve the current protection system from a legal perspective so that foreign investors and FIEs can faster protect their intellectual property rights in Shanghai based on a joint working mechanism of intellectual property rights and through a diversified mechanism for dispute resolution. Communication and cooperation regarding intellectual property rights and technologies between local entities or scientific entities and foreign investors and FIEs shall be intensified and encouraged through voluntary and fair negotiations. No authority shall force any foreign investor or foreign-invested enterprise to transfer any technology.
- Promises made by the authorities and agreements reached between the government and foreign investors or FIEs shall be carried out without any default due to changes in government officials or policies. For changes resulting from national interests and social public interests, reasonable compensation shall be paid to the affected foreign investors or FIEs.
- In case of complaints or requests from FIEs, the respectively competent authority of the Shanghai Government shall reply and/or settle in a timely manner to ensure the legitimate rights of foreign investors and FIEs and to guarantee the fair treatment on FIEs.

3. Summary

The new FIL will come into effect on 1 January 2020. The Opinions basically reiterate the principles stipulated in the FIL and provide a legal basis for the authorities in Shanghai to adapt their respective responsibilities and obligations when implementing the FIL starting from 2020.

Clearly, the Shanghai Government is committed to further attract foreign investment and the Opinions provide a positive signal to foreign investors and FIEs. The detailed implementation will be subject to implementing rules and measures which still need to be published.

In case you have questions or for further information, please contact the authors of this newsletter:



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