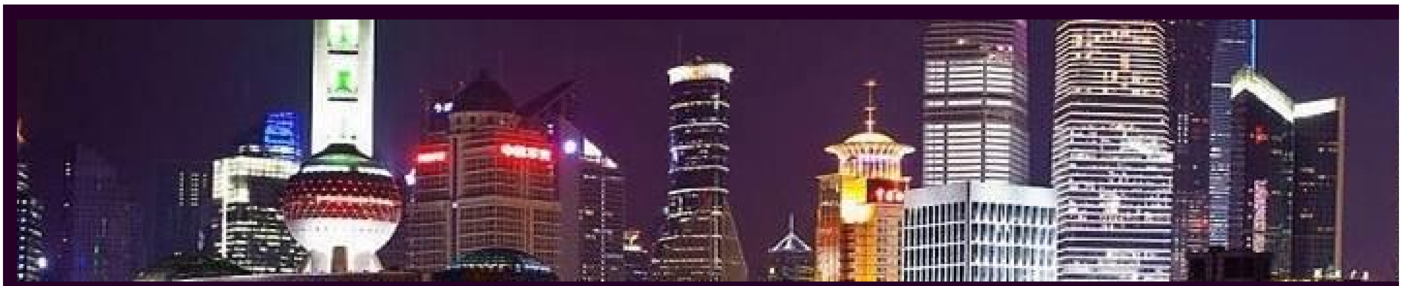

Newsletter

Update

February 10, 2023

Update

China Lists Nine Pilot Regions for Domestic and Foreign Trade Integration

On January 11, 2023, the Ministry of Commerce ("MOFCOM") released the *Notice on Listing the Pilot Regions for Domestic and Foreign Trade Integration* ("Notice"). The Notice has come into effect since December 8, 2022.

MOFCOM and other 13 departments have determined Beijing Municipality, Shanghai Municipality, Jiangsu Province, Zhejiang Province (including Ningbo City), Fujian Province (including Xiamen City), Hunan Province, Guangdong Province (including Shenzhen City), Chongqing Municipality, Xinjiang Uygur Autonomous Region as the pilot regions for domestic and foreign trade integration. The Notice requires departments to foster a number of firms that run both domestic and foreign trade business by focusing on a number of key industries, create a batch of platforms, form a number of industrial clusters with international competitive and integrated development, as well as establish improved institutional mechanism to promote the integrated development of domestic and foreign trade.

China Unveils Measures to Further Support Foreign-funded R&D Centers

On January 18, 2023, the Chinese government released *Circular of the State Council on Forwarding the Measures of the Ministry of Commerce and the Ministry of Science and Technology on Further Supporting Foreign Investors in Setting up Research and Development ("R&D") Centers in China* ("Circular"). The Circular has come into effect since January 11, 2023.

The Circular rolled out 16 measures in four aspects, which aim to support development of scientific and technological innovation, provide more convenience for R&D activities, introduce of overseas talent, and enhance protection of intellectual property rights. The Circular specifies the need to implement favorable tax policies for scientific and technological innovations, support legal cross-border circulation of R&D data in accordance with law, optimize the management of the external transfer of intellectual property rights and technology import and export, emphasize improvement of the protection system for confidential business information, enhance intellectual property enforcement level, and fully implement the punitive compensation system for intellectual property infringement.

244 Geographical Indication Products Have Been Recognized and Guaranteed by China and Europe

On January 18, China National Intellectual Property Administration ("CNIPA") showed that China and Europe continue to strengthen cooperation on geographical indications and have achieved mutual recognition and protection of 244 products in total so far.

The China-EU Landmark Geographical Indications Agreement is the first comprehensive and high-level bilateral treaty on geographical indications signed by China. Recently, the second batch of China-EU list of mutual recognition has made new progress. CNIPA accepted 175 applications for geographical indications protection from the EU, covering 22 EU member states such as Spain, France, Italy, Germany and Greece, with product categories concentrated in 5 major categories such as wine, spirits, meat products, dairy products and olive oil, etc. Also, European Commission has accepted 175 applications for geographical indications, including Jinhua ham, Luzhou old cellar wine, Fuling squash, Ningxia wolfberry and etc., which cover wine, spices, tea, meat products, Chinese herbs, handicrafts, fruits, etc. It is expected that by the end of the 14th Five-Year Plan, the scale of mutual recognition and protection of geographical indications between China and Europe will be steadily expanded to about 550.

Liaoning Province Releases 27 Measures to Further Stabilize Economy Development

On January 20, the People's Government of Liaoning Province issued *Policy Initiatives for Further Stabilizing Economy in Liaoning Province* ("Policy Initiatives"). The Policy Initiatives has come into effect since January 20, 2023.

The Policy Initiatives proposes that the People's Bank of China should arrange for the amount of refinancing and rediscounting to be no less than RMB 70 billion, strengthen governmental financing guarantee support, and give a total subsidy of up to 15 million yuan to listed enterprises in phases. The Policy Initiatives also proposes to promote the steady growth of foreign trade and foreign investment. For the high-quality foreign-invested projects with a new establishment of more than USD 50 million and a capital increase of more than USD 30 million, rewards will be given according to the proportion of the actual foreign investment not higher than 2%, with a maximum reward of RMB 10 million.

China Supports Transportation of Commercial NEVs by Rail

On January 30, the Chinese government released *Opinions on Supporting Transportation of Commercial New Energy Vehicles by Rail to Serve the Development of the Industry* ("Opinions"). The Opinions has come into effect since January 3, 2023.

The Opinions encourages rail transport enterprises to carry out commercial new energy vehicles ("NEVs") by rail, clarifying that commercial NEVs by rail will not be managed as dangerous goods. The Opinions requires standardizing rail transport conditions, strengthening management of rail transport and supervision of rail transport safety. The Opinions clarifies that the state of charge of power batteries of commercial NEVs shall not exceed 65%, and it shall not to refill or extract fuel during transporting hybrid vehicles by rail. When consigning commercial NEVs, except for the assembled battery, no spare batteries and other batteries shall be entrained. and no other items shall be loaded in the interior and trunk of the NEVs except for the necessary items equipped in the factory.

STA Allows Handling of Certain Tax Matters in the Absence of Minor Materials

On January 31, the State Taxation Administration ("STA") released the *Announcement of State Taxation Administration on Allowing Handling of Certain Tax Matters without Sufficient Application Materials and Further Streamlining Submission of Tax-related Materials* ("Announcement"). The Announcement has come into effect since February 1, 2023.

Allowing handling of tax matters without sufficient application materials is a convenient and beneficial form of tax service introduced by taxation authorities. When a taxpayer submits main materials that are complete and in legal forms, but temporarily fails to submit complete or flawless minor materials in application for handling of a tax matter, the tax authorities may handle the tax matter after the taxpayers voluntarily commits in writing to make up or correct the missing materials within the specified time limit.

CIRC Supports the Risk Reduction Services in the Property Insurance Industry

On January 31, the Chinese government published the *Opinions of the General Office of China Banking and Insurance Regulatory Commission ("CIRC") on the Property Insurance Industry to Actively Carry out Risk Reduction Services* ("Opinions"). The Opinions has come into effect since January 15, 2023.

The Opinions emphasizes returning to the original source as one of the basic principles, requiring to broaden the field of risk reduction services, consolidating foundation of risk reduction services, encouraging companies to establish and improve internal control system related to risk reduction services, and requiring companies not to have false propaganda, illegal promises, mandatory bundled sales and other irregularities; not to extract fees or engage in other illegal acts through risk reduction services and not to illegally trading. The company shall not disclose the information and commercial data of the insured companies.

Zhejiang Unveils China's First Rules on the Examination of Administrative Legitimacy

On January 9, the People's Government of Zhejiang Provincial announced the *Provisions on the Examination of Administrative Legitimacy in Zhejiang Province* ("Provisions"), the Provisions shall come into force on April 1, 2023.

The Provisions is the first provincial-level rules on the examination of administrative legitimacy in China, which expands the focus of administrative legitimacy examination to four areas, such as administrative regulatory documents, major administrative decisions, major administrative law enforcement decisions, and administrative agreements. It expands the application of the examination rules to other law-related administrative affairs, and further places the governments of townships, streets, and organizations authorized by laws and regulations to manage public affairs under the administrative legitimacy examination. It also pioneered a "closed-loop and standardized" examination mechanism, clarifying that matters that have not been subject to the legitimacy examination shall not be submitted for deliberation, shall not make a decision, or announced to the public.

Article(s)

Favorable Regulatory Changes for Foreign-Invested Telecom Operators

by Esther Lin

1. Regulatory Update

(1) Regulatory Restriction and Favorable Changes of Laws and Policies

Pursuant to *Special Administrative Measures (Negative List) for Foreign Investment Access (Edition 2021)*, foreign investor's equity in value-added telecom services providers (except for e-commerce, domestic multi-party communications, store-and-forward, call centers) shall not exceed 50%, and primary telecom service operators shall be controlled by the Chinese party. Negative lists of the different pilot free trade zones also have the same rules.

On March 29, 2022, the State Council promulgated *Administrative Provisions on Foreign-funded Telecommunications Enterprises (2022 Revised)* ("Provisions"), which became effective on May 1, 2022. The Provisions simplified the procedures for setting up foreign-invested telecom companies and removed the requirement of good performance and operating experience in telecom businesses for major foreign investors, which is a signal to further open Chinese market to foreign investors. The major changes introduced by the Provisions include the following:

First, regarding the restrictions on foreign equity participation in foreign-invested telecom enterprises, the Provisions provides for an exception to the general requirement of foreign equity ratio not exceeding 50%, i.e., "except as otherwise stipulated by the state".

Second, the Provisions further clarified that foreign-invested telecom enterprises are not required to go through the establishment review procedure by "separating business licenses from business permits." In other words, under the condition that the foreign equity ratio restriction is met, foreign telecom enterprises that intend to develop value-added telecom business in China may obtain a telecom business license first and then apply to the Ministry of Industry and Information Technology (MIIT) for Telecom Business Permits without other pre-approval procedures for foreign enterprises.

Third, the Provisions removed the requirement for major foreign investors to have "good performance and operating experience in telecom business". Thus, compared with domestic enterprises, currently there is no additional requirements for foreign invested enterprises to obtain China's value-added telecom business permits.

Finally, the administrative processing time of the telecom business permit is shortened to 60 working days. If all the relevant application materials are ready, an applicant can expect to receive a decision on approval or disapproval within 60 working days from the date of submitting the application materials.

It should be noted that, the above is an ideal situation presumed in light of the relevant changes of the new regulations. The specific application materials filing requirements, review standards and processing time may still vary depending on the opinions and practical operations of different local regulatory authorities.

(2) Regulations and Practices of Special Regions

In addition to the general provisions, in special regions such as Shanghai Pilot Free Trade Zone and Beijing Comprehensive Pilot Demonstration Zone and Demonstration Parks for Expanding Opening up in the Service Industry (Beijing Pilot), foreign investors enjoy a more open access policy.

MIIT issued *Opinions on Further Opening up Value-added Telecommunication Business to Foreign Investments in China (Shanghai) Pilot Free Trade Zone* ("Opinions") in 2014, which lifted the 50% foreign equity restrictions in certain value-added telecom services, i.e., foreign investors can own more than 50%. According to the Opinions, foreign investor's equity ratio in call center business, domestic multi-party communication business and Internet access (access service for Internet users) business may exceed 50%. However, foreign equity ratio in online data and trade processing (for-profit e-commerce) businesses still may not exceed 55%. To qualify for conducting the aforesaid telecom businesses, an enterprise shall be registered with and have its service facilities located in the Shanghai Pilot Zone. As for the business scope, Internet access (access service for Internet users) operators shall be limited within the Shanghai Pilot Zone, while other value-added telecom business operators may cover the whole country. Hence, the two existing Beijing entities are not qualified to enjoy the policy of Shanghai Pilot Zone, if Comcast would like to enjoy Shanghai special rules and policies, it is recommended to establish a new entity for such businesses in Shanghai Pilot Zone.

On August 28, 2020, the State Council released the *Official Reply to the Work Plan on Fully Promoting the Comprehensive Pilot Program for Expanding the Opening up of the Service Industry in Beijing* ("Work Plan"), which removed foreign equity ratio restrictions of certain value-added telecom business such as B22 domestic multi-party communication service business, B23 store-and-forward business, and B14 Internet access service business (Internet access services for users only) for the enterprises registered in the Beijing pilot demonstration districts or demonstration park.

(3) Conclusion

The above favorable changes of laws and policies greatly reduce access requirements for foreign-invested telecom entity, especially for operating value-added telecom services. With the gradual opening of the approval for foreign investor, the further liberalization of foreign investment in telecom business extends another new path for foreign investors who intend to operate telecom business to break away from VIE structure, providing favorable support for the domestic capitalization operation of foreign-invested telecom entities.

Contact Us

davidzou@grandwaylaw.com

www.grandwaylaw.com

23F, S2 Building, Bund Financial Center, 600 Zhongshan No. 2 Road (E), Shanghai, 200010, China