



世民律師事務所 SHIMIN LAW OFFICES

## NEWSLETTER

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### **The National Development and Reform Commission: Calling for Public Comments on the Newly Revised Draft of Catalogue for the Guidance of Foreign Investment Industries**

Presently revision to the Catalogue for the Guidance of Foreign Investment Industries (“the Catalogue”) is being undertaken by the National Development and Reform Commission (“the NDRC”), which seems to be one of the utmost openness ever. On November 4, 2014, the NDRC published a revision draft of the Catalogue on its official website and the period for canvassing opinions is from November 4 to December 3, 2014.

Along with the announcement for canvassing opinions on the draft revision to the Catalogue<sup>1</sup>, the NDRC says that this revision is conducted under the principle that is to adapt to the globalization, to expand opening-up actively and positively, to convert the way of management of foreign investment, to adjust and optimize the economic structure and to promote transparency. The revision focuses on removing a certain restricted sectors from the Catalogue and deregulating shareholding ratio by foreign investment in certain sectors; curbs on admittance for foreign investment in manufacturing and service industries are remarkably eased as well.

As a partnership law firm established in 1999, Shimin Law Offices is an all-round, large-scaled and reputable local legal service provider that concentrates on foreign related legal matters.

We are dedicated to our clients. Our ultimate goal is to provide high quality and efficient services to our clients.

*For further information and discussion on the matters covered in this letter, please contact us at the addresses set following :*

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<sup>1</sup> The NDRC, November 7, 2014: Announcement on Canvassing Opinions on the Draft Revision to Catalogue for the Guidance of Foreign Investment Industries

[http://www.ndrc.gov.cn/yjzx/yjzx\\_add.jsp?SiteId=85](http://www.ndrc.gov.cn/yjzx/yjzx_add.jsp?SiteId=85)

**The Number of restricted sectors are reduced sharply from 79 to 35.**

Regarding the manufacturing industry, several sectors are removed from the restricted list such as beverage making, petroleum processing, coking and nuclear fuel processing, chemicals and chemical products manufacturing, pharmaceutical industry, chemical fiber manufacturing, special equipment manufacturing, construction and operation of power grid (Chinese-controlled).

Regarding the wholesale and retailing industry, sectors such as direct selling, mail-order, online sales, distribution of audio and video products (limited to joint venture and excluding movies) and the wholesale of refined oil are removed from the restricted list as well.

In addition, real estate industry is no longer restricted, and regarding the entertainment industry, construction and operation of cinemas (Chinese-controlled), construction and operation of large-scale theme parks, operation of entertainment venues(constrained to equity joint venture or co-operative enterprise) are also free of restrictions.

**Curbs on shareholding ratio by foreign investment are further eased, with the number of sectors constrained to equity joint venture or co-operative enterprise decreasing from 43 to 11, the number of sectors constrained to Chinese-controlling shareholding ratio decreasing from 44 to 32.**

Compared with the Catalogue (2011 amendment), it can be found that in many sectors are no longer subject to the constraint on business type of equity joint venture or co-operative enterprise, or subject to the constraint of Chinese-controlling shareholding ratio, especially, concerning the constraint about the business types requirements, approximately 30 sectors are removed from the list.

Among industries such as mining, railway, shipbuilding, aerospace industry and other transport equipment manufacturing industries, electric machinery and equipment manufacturing, leasing and commercial services, water conservancy, environmental and public facilities management, culture, sports and entertainments, several sectors are no longer constrained by the business type of being equity joint venture or co-operative enterprise.

According to Wang Dong, inspector of the NDRC's Foreign Capital Utilization and Overseas Investment Department, "Through lifting constraint on shareholding ratio and by removing more sectors from the restricted list, it will provide more convenience for foreign investors. Meanwhile, we are also carrying out reforms to streamline administration and to conduct institute decentralization. More than 90% of the foreign investment projects have been put under the record system and the scope of approval system has been reduced much more. The effort of coordinating the respective

supervision systems towards domestic investment and foreign investment has provided a solid foundation for us to create a better environment for the foreign investment further. <sup>2</sup>

### **Easing curbs on manufacturing and service industries for foreign investment.**

Much stress has been put on lifting restrictions and letting go of the constraint of shareholding ratio by foreign investment in industries of manufacturing and service, including sectors such as steel, ethylene, oil refining, equipment for coal-chemical industry, automobile electronic devices, hoisting equipment, power transmission devices, metro, international marine transportation, e-commerce, certain financial business, insurance brokers, import and export commodity inspections, etc.

It deserves additional attention that the constraint of shareholding ratio to the joint ventures engaging in complete vehicle manufacturing still remains the same that the shareholding ratio by Chinese domestic investment shall account for no less than 50%. Seeing from this perspective, the possibility of deregulation to such joint ventures in short term seems to be small; meanwhile, complete vehicle manufacturing is ruled among the restricted list for foreign investment, which indicates that the policy is strict and therefore approvals by the administrative authorities for joint ventures engaging complete vehicles manufacturing are going to be difficult to be obtained.

### **Reminder**

The ongoing revising to the Catalogue fairly conforms to The decision of the CPC Central Committee on the Comprehensive Promotion of Several Major Issues of Rule of Law, which also highlights the fact that laws concerning foreign investment are integrated parts to the principal of rule of law in China. It offers significant opportunities for foreign investment engaging in manufacturing and service industries since the revising is taking positive experience of Shanghai Free Trade Zone into consideration and it indicates that Chinese government is posing a more and more positive and open attitude towards foreign investment. It is believed that the related documents both nationally and locally will be published within a certain period after the promulgation of the Catalogue revised in order to provide more convenience for foreign investors.

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<sup>2</sup> CNR News, November 7, 2014: the Renewed Catalogue for the Guidance of Foreign Investment Industries Substantially Lifts Restrictions to Foreign Investment .  
[http://china.cnr.cn/NewsFeeds/201411/t20141104\\_516725594.shtml](http://china.cnr.cn/NewsFeeds/201411/t20141104_516725594.shtml)

The period for canvassing opinions lasts for one month, the public may put forward suggestions and advice regarding the draft before December 3, 2014 through NDRC's website in Chinese (<http://www.ndrc.gov.cn>) by entering into the page of opinion gathering, which is shown in Chinese as “意见征求”.

For any further enquiry, please contact us.

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