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Pilot Free Trade Zone Series — Release of Negative List for China (Shanghai) Pilot Free Trade Zone (2014)

Regulations discussed in this issue:

- *Special Administration Rules for Foreign Investments in China (Shanghai) Pilot FTZ relating to the Negative/Exclusion List (2014)* (Shanghai Municipal Government Announcement No.1, issued on 30 June 2014)

Background

The Shanghai Municipal Government has recently released the *Special Administration Rules for Foreign Investments in China (Shanghai) Pilot Free Trade Zone relating to the Negative/Exclusion List* ("the 2014 Negative List"). Compared with the 2013 version, the 2014 Negative List cuts the number of special administration measures on foreign investment from 190 down to 139, including 110 restrictive measures and 29 prohibitive measures.

The issuance of the widely-followed 2014 Negative List signifies the Shanghai Municipal Government's commitment to increase openness, transparency and maneuverability of foreign investment in China (Shanghai) Pilot Free Trade Zone ("the Pilot FTZ"). Based on the previous version, the 2014 Negative List lifts the barriers imposed on foreign investment in certain industries. It is undoubtedly a positive message to those investors who desire variance greater degree of freedom in the Pilot FTZ.

What's new in the 2014 Negative List?

The 2014 Negative List has been adjusted in the following aspects:

- Removal of 51 restrictions
Including 14 restrictions due to increased openness, 14 restrictions due to the same restrictions to the domestic enterprises, and 23 other restrictions due to re-classification.
- Relaxation of investment control
Including a total of 19 substantially relaxed items of special administrative measures
- Clarification of conditions on certain special administrative measures
Clarifying or removing limitation or restriction on those measures that have not hitherto had their limiting conditions defined. The number of special administration measures with no clearly defined conditions has been reduced to 25 from 55.

The following is a summary of the noteworthy changes in certain industry:

Industry	Measures
Real Estate	• Allowing wholly-foreign invested land development projects which were hitherto limited to joint ventures • Allowing foreign investment in real-estate agencies • Allowing foreign investment in construction and operation of large-scale wholesale markets for agricultural products
Financial Services	• Removing restrictions on foreign investment in banks, trust companies or currency brokerages
Medical Services	• Removing the minimum investment requirement and maximum operation period of foreign investment in medical institutions
Professional Technology Services	• Removing restriction on foreign investment in import and export goods certification companies • Removing qualification requirements on foreign investor of certification institutions
Transportation Services	• Removing the requirements of foreign investment in international cargo handling, international marine shipping container station and yard operation to be joint venture or collaborative undertaking • Removing the requirements of s foreign investment in air transportation sales agency to be joint venture or collaborative undertaking

KPMG observations

The 2013 Negative List was the first negative list to be published in China, and it attracted a lot of attention when it was released. It replaced the approval system with a filing system to simplify procedures and reduce processing time for setting up foreign investments in areas beyond the Negative List, while failing to meet investors' expectation in terms of openness. The Shanghai Municipal Government promised to revise the Negative List and streamline the Negative List management model step by step to reflect the developmental needs of the Pilot FTZ.

The issuance of the 2014 Negative List illustrates the determination of the Pilot FTZ to increase its openness and transparency and to further align with international practice. On the other hand, it empowers the Negative List as a management tool that meets international standards.

It should be noted that the exclusion of several items from the list does not entail permission, as they are removed from the list insofar as the subject matter not solely apply to foreign enterprises, and are already adequately covered by the law. For instance, the exclusion of the gambling and sex industries from the list does not mean that foreign enterprises are allowed to invest in these areas thereon.

We have high expectations for the latest developments regarding the Pilot FTZ, which include 31 measures to open up provided by *The Measures to Further Expand Openness in China (Shanghai) Pilot Free Trade Zone* approved by the State Council on 28 June, and the 2014 Negative List released two days later. We will also pay close attention to the impact of such developments on investors.

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