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Further Open Value-added Telecommunication Services to Foreign Investors in the Shanghai FTZ

By David Yu and Lawrence An

The *Administrative Provisions for Foreign-invested Telecommunication Enterprises* that entered into effect on 1 January 2002 and were amended on 10 September 2008 limit the equity participation percentage of foreign investors in foreign-invested enterprises providing value-added telecommunication services to less than 50 percent. The *Opinions on Further Opening Value-added Telecommunication Services in the China (Shanghai) Pilot Free Trade Zone to Foreign Investment*(the "Opinions") issued by the Ministry of Industry and Information Technology ("MIIT") and the Shanghai Municipal People's Government on 6 January 2014 relaxes the previous restrictions on shareholding percentage of foreign investors in enterprises providing value-added telecommunication services within the China (Shanghai) Pilot Free Trade Zone ("Shanghai FTZ").

Current Regulations

The *Administrative Provisions for Foreign-Invested Telecommunication Enterprises* specify that the equity participation percentage of the foreign investors in a foreign-invested enterprise that provides value-added telecommunication services may not ultimately exceed 50 percent. The *Catalog for Guiding Foreign Investment in Industries* as amended in 2011 also specifies that the shareholding percentage of foreign investors in an enterprise that provides value-added telecommunication services may not exceed 50 percent.

As a special arrangement between Mainland China and Hong Kong Special Administrative Region, *Supplement X* to the *Mainland and Hong Kong Closer Economic Partnership Arrangement* ("CEPA") signed on 29 August 2013 specifies that the shareholding percentage of qualified "Hong Kong service providers" (as defined under the CEPA) in an equity joint venture enterprise established in Guangdong that provides online data processing and transaction processing services may be up to 55 percent. The transaction processing services include e-commerce services such as B2B, B2C, C2C, etc.

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The newly issued Opinions further specify the opening of seven value-added telecommunication service sectors in Shanghai FTZ on a trial basis, including relaxing the shareholding percentage of foreign investors in three services on a trial basis and newly opening four services to foreign investment on a trial basis.

Extracts of Contents

- Details on services opened on a trial basis

  The Opinions specify the following three services in which the shareholding percentage of foreign investors is relaxed on a trial basis and four services newly opened to foreign investment on a trial basis:

  Three services in which the shareholding percentage of foreign investors is relaxed on a trial basis: the shareholding percentage of foreign investors in “information services” and “storage and forwarding services”, the opening of which was committed to the WTO but which to date is still subject to the 50 percent limit nationwide, may exceed 50 percent on a trial basis (the information services are limited to “app stores”). The shareholding percentage of foreign investors in “online data processing and transaction processing services” (e-commerce business) may not exceed 55 percent. It should be noted that the phrase “app store” appears in the *Classification of Telecommunication Services (Draft for Comment)* issued in 2013for the first time where it is placed in information publication platform and delivery services under the category of information services. However, its specific meaning and scope of business have not yet been expressly defined in relevant laws, regulations or other regulatory documents.

  Four services newly opened to foreign investment on a trial basis: “call center services”, “domestic conferencing services”, “internet access services” (providing internet access services to online users) and “domestic internet virtual private network services”. For “call center services”, “domestic conferencing services” and “internet access services” (providing internet access services to online users), the shareholding percentage of foreign investors may exceed 50 percent; but for “domestic internet virtual private network services” the shareholding percentage of foreign investors may not exceed 50 percent.

- Pilot area

  Pursuant to the Opinions, the place of registration and location of the service facilities of enterprises that apply to operate the above mentioned value-added telecommunication services must be in Shanghai FTZ. The scope of services for internet access services (providing internet access services to online users) is limited to Shanghai FTZ whereas the scope of services of the other services may be nationwide. The definition of “service facilities” remains unclear and requires further clarification in relevant specific implementation measures.

Analysis

Possibility of wholly foreign-owned or controlled value-added telecommunication enterprises: one breakthrough worth noting in the recent Opinions is that the 50 percent shareholding limit on foreign investors has been relaxed in certain sectors, even wholly foreign-owned enterprises are allowed. The *Explanations of the Policies in the Opinions on Further Opening Value-added Telecommunication Services in the China (Shanghai) Pilot Free Trade Zone to Foreign Investment* jointly issued by MIIT and the Shanghai Municipal People's Government in January 2014 further clarify this point as follows: "foreign investors may establish wholly foreign-owned enterprises to operate the following value-added telecommunication services: app store services in the information services, storage and forwarding services, call center services, domestic conferencing services and internet access services provided to online users".

Other access requirements in respect of foreign investment in enterprises providing value-added telecommunication service: in addition to the restrictions on the shareholding percentage of foreign investors, the *Administrative Provisions for Foreign-Invested Telecommunication Enterprises* set forth other access requirements in respect of foreign investment in value-added telecommunication services, including registered capital, the industry background and operating experience of the major foreign investor, etc. The recent Opinions have not made any revisions in respect of those requirements.

Given that the recent Opinions were issued by MIIT and the Shanghai Municipal People's Government in the form of opinions, the relevant trial arrangements are principles in nature. Therefore, the market participants are expecting more detailed operational guidelines and complementary documents to be issued by the relevant local authorities.

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