

New Regulations on the Provision of Value Added-Telecommunication Services by Foreign Investors

By David Yu and Lawrence An

On 6 January 2014, the Ministry of Industry and Information Technology (“the MIIT”) and the Shanghai municipal government jointly issued the *Opinions on Further Opening Value Added Telecommunication Services to Foreign Investment in the China (Shanghai) Pilot Free Trade Zone* (“the Opinions”), opening a series of value-added telecommunication services to foreign-invested enterprises in the China (Shanghai) Pilot Free Trade Zone (“the FTZ”) and specifying that where foreign-invested enterprises engage in the provision of certain services, the shareholding percentage of the foreign investors may exceed 50 percent.

On 15 April 2014, the MIIT further issued the *Administrative Measures for the Pilot Project for Foreign Investment in the Provision of Value-Added Telecommunication Services in China (Shanghai) Pilot Free Trade Zone* (“the Measures”) and accompanying explanations of the policies, clarifying certain operational details in the Opinions.

The Measures further specify the conditions for foreign-invested enterprises in the FTZ to apply to engage in the provision of value-added telecommunication services, the materials needed to be submitted, the review procedure by government authorities and the annual inspection system for foreign-invested telecommunication enterprises in the FTZ. The Measures provide additional detail for the Opinions, erecting a practicable framework for foreign investment in value-added telecommunication services in the FTZ.

As compared to the *Administrative Measures for Foreign-Invested Telecommunication Enterprises* (“the Provisions”) issued by the State Council on 10 September 2008, the Measures make it more convenient and easier for foreign-invested enterprises in the FTZ to engage in the provision of value-added telecommunication services.

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下列人员联系：

郭建良: (86 21) 3135 8756
Publication@llinkslaw.com

If you would like other Llinks
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Roy Guo: (86 21) 3135 8756
Publication@llinkslaw.com

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Preferential Policies

Firstly, while allowing foreign-invested enterprises in the FTZ to provide value-added telecommunication services on a national scale, the Measures also set a relatively low entry threshold in terms of registered capital.

Pursuant to Article 5 of the Provisions, the minimum registered capital for a foreign-invested telecommunication enterprise providing value-added telecommunication services within a province, autonomous region or municipality directly under the central government is RMB1 million and the minimum registered capital for one providing value-added telecommunication services nationwide or in more than one province, autonomous region or municipality directly under the central government is RMB10 million.

Point 2 of the Opinions and Article 3 of the Measures, in contrast, specifies that where an enterprise engages in the provision of information services, storage and forwarding services, call center services, domestic conferencing services or domestic internet virtual private network services, so long as its place of registration and service facilities are in the FTZ, the services may be offered on a nationwide basis. Furthermore, the minimum registered capital for foreign-invested enterprises in the FTZ providing such value-added telecommunication services is RMB1 million.

Additionally, the Measures simplify the approval authority and lessen the time required for approval of foreign-invested enterprises in the FTZ applying to engage in the provision of value-added telecommunication services.

In terms of the approval authority, pursuant to Articles 11 and 12 of the Provisions, a foreign-invested enterprise submits its application either directly to the MIIT or to the provincial level telecommunication authority which will then forward it to the MIIT for approval. In contrast, pursuant to Article 4 of the Measures, a foreign-invested enterprise in the FTZ submits its application to the Shanghai Communication Administration, which will then render a decision granting or withholding approval.

In terms of the time required for approval, the policy explanation for the Measures points out that in the procedure for the approval of an application by a foreign-invested enterprise to engage in the provision of telecommunication services, the Review Opinion on Foreign Investment in the Provision of Telecommunication Services and the Permit for Operating Telecommunication Services involve the MIIT and require a total time for approval of five months at these two stages. In contrast, pursuant to Article 6 of the Measures, the two review stages are merged and simplified with the entire time required for approval reduced to two months.

Points Requiring Attention

Firstly, Articles 9 and 10 of the Measures specify the annual inspection system for foreign-invested telecommunication enterprises in the FTZ.

Pursuant to Article 10 of the Measures, the Shanghai Communication Administration will comprehensively review the annual inspection materials submitted by an enterprise, examining its operating entity, business acts, telecommunication charges, service quality, protection of personal information of users, implementation of network and information security and management requirements, implementation of relevant regulations of the state and telecommunication authority, etc. and has the authority to impose the attendant administrative penalties and render a finding of failure in the annual inspection. The results of the annual inspection of an enterprise and any penalties imposed will be announced to the public.

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Furthermore, Article 6 of the Measures specifies that where the Shanghai Communication Administration approves the engagement in the provision of value-added telecommunication services by a foreign-invested enterprise, it will issue an Official Reply of the China (Shanghai) Pilot Free Trade Zone for the Pilot Project for the Engagement in the Provision of Value-Added Telecommunication Services by Foreign-Invested Enterprises (an “Official Reply”). For the time being an Official Reply is valid for three years. This is something an enterprise should note at the time of its establishment so as to guard against it becoming invalid.

Finally, the stipulations of the Provisions on the conditions applicable to the main foreign investor continue to apply. Article 10 of the Provisions specifies that, “the main foreign investor in a foreign-invested telecommunication enterprise engaging in the provision of value-added telecommunication services shall have a good track record and operations in providing value-added telecommunication services”.

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Contact Details

If you would like to know more information about the subjects covered in this publication, please feel free to contact the following people or your usual Links contact.

Shanghai	
David Yu Tel: (86 21) 3135 8686 David.Yu@llinkslaw.com	Ming Zhang Tel: (86 21) 3135 8777 Ming.Zhang@llinkslaw.com
Bernie Liu Tel: (86 21) 3135 8678 Bernie.Liu@llinkslaw.com	Selena She Tel: (86 21) 3135 8770 Selena.She@llinkslaw.com
Nicholas Lou Tel: (86 21) 3135 8783 Nicholas.Lou@llinkslaw.com	
Beijing	
David Yu Tel: (86 10) 8519 2266 David.Yu@llinkslaw.com	Bernie Liu Tel: (86 10) 8519 2266 Bernie.Liu@llinkslaw.com
James Weng Tel: (86 10) 8519 2266 James.Weng@llinkslaw.com	

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