

传媒娱乐法律热点问题

上海自贸区开放部分传媒娱乐产业

2013年9月29日，中国（上海）自由贸易试验区（以下简称“上海自贸区”）举行挂牌仪式，标志着上海自贸区正式启动运作。此次上海自贸区对于传媒娱乐产业的改革是上海自贸区改革的亮点之一。根据媒体报道，多家传媒娱乐领域的上市公司已经于上海自贸区成立子公司，例如时代出版¹、东方明珠²，有望借助上海自贸区的开放政策，寻求传媒娱乐产业板块创新发展的机会。

2013年9月18日，国务院批准了《中国（上海）自由贸易试验区总体方案》（以下简称“《总体方案》”）。《总体方案》明确规定上海自贸区应扩大开放文化服务领域，改革外商投资管理模式。2013年9月29日，为了落实《总体方案》娱乐、文化、传媒领域的开放措施，文化部发布了《文化部关于实施中国（上海）自由贸易试验区文化市场管理政策的通知》（以下简称“《通知》”），包括娱乐行业外资企业的设立、游戏设备的生产销售等内容。同日，上海市政府又出台了《中国（上海）自由贸易试验区外商投资准入特别管理措施（负面清单）（2013年）》（以下简称“负面清单”）。从负面清单来看，上海自贸区对于部分传媒娱乐产业仍然采取保守态度。

根据现已公布的上海自贸区相关法规和政策，上海自贸区对于外商投资传媒娱乐领域的主要规定如下：

¹ 中国证券网：“时代出版提早落子自贸区”，http://www.cnstock.com/v_company/scp_dsy/tcsy_tt/201308/2719396.htm，最后访问日期2013年9月30日。

² 中国证券网：“东方明珠自贸区设子公司 享文化改革红利”，http://ggjd.cnstock.com/company/scp_ggjd/tjd_bbdj/201309/2754998.htm，最后访问日期2013年9月30日。

一. 开放领域

相较于《外商投资产业指导目录（2011年修订）》与相关外商投资法律法规，上海自贸区取消了演出经纪、娱乐场所和游戏机、游艺机销售及三个领域的外商投资限制，并简化了外商投资的行政审批程序，有利于传媒娱乐企业在这些领域的创新发展。

1. 演出经纪

对于演出经纪行业的股比限制，根据《外商投资产业指导目录（2011年修订）》，演出场所经营属于鼓励外商投资产业，但是限于中方控股；演出经纪机构属于限制外商投资产业，也限于以中方控股的形式投资。《总体方案》和《通知》取消了上海自贸区内外资演出经纪机构的股比限制，允许设立外商合资、合作、独资演出经纪机构、演出场所经营单位，为上海市提供服务。

对于设立外商投资演出经纪的审批程序，《营业性演出管理条例》规定设立中外合资经营、中外合作经营的演出经纪机构、演出场所经营单位，应当通过省级人民政府文化主管部门向文化部提出申请。文化部《通知》简化了这一审批程序，规定设立外资演出经纪机构，只须向上海市文化主管部门提出申请并由其作出决定；设立外资演出场所经营单位，只须自领取工商营业执照之日起20日内，到上海市文化主管部门备案。若外资演出经纪机构在上海市举办营业性演出活动，或外资演出场所经营

单位在本场所内举办营业性演出活动，也只需要向上海市相应的文化主管部门提出申请。

2. 娱乐场所

根据《外商投资产业指导目录(2011年修订)》，外商投资娱乐场所限于合资、合作形式。《总体方案》和《通知》取消了上海自贸区内对于娱乐场所的外资比例限制，允许设立合资、合作、独资娱乐场所。

根据《娱乐场所管理条例》，设立合资、合作经营的娱乐场所，应当向所在地省级文化主管部门提出申请，并由受理申请的部门联合公安部对法定代表人或负责人进行核查，再实地考察后才能作出决定。文化部《通知》简化了考察程序，仅要求娱乐场所符合法规规章关于娱乐场所的设立要求，由上海市文化主管部门受理申请之日起20日内作出决定。

3. 游戏机、游艺机销售及服务

2006年，文化部会同多个部门发布了《关于开展电子游戏经营场所专项治理的意见》，全面禁止面向国内的电子游戏设备及其零、附件生产、销售。《总体方案》和《通知》解除了上海自贸区内对于游戏机的禁令，允许外资企业在上海自贸区内从事游戏游艺设备的生产和销售，通过文化主管部门内容审查的游戏游艺设备可面向国内市场销售。

若上海自贸区内注册的外资企业计划在国内销售其生产的游戏游艺设备，还须向上海市文化主管部门提出内容审查申请并由其于受理申请之日起20日内作出决定，通过内容审查的报文化部备案并公示。

二. 禁止与限制领域

上海自贸区根据文化部《通知》，在演出经纪、娱乐场所和游戏机生产销售方面扩大了开放程度，然而，对于部分娱乐、文化、传媒产业，负面清单采取了与《外商投资产业指导目录(2011年修订)》和其他行业的法律法规基本相同的措施，依然设定了限制或禁止外资进入的特别管理措施。对于适用限制管理措施的外商投资项目(包括限制投资，要求中方控股，限于合资合作等限制管理措施)，仍然保持已有的外商投资项目核准体制。但是，上海自贸

区的负面清单采取动态管理模式，未来还存在调整的可能。

1. 印刷和记录媒介复制业

对于印刷行业，负面清单与《外商投资产业指导目录(2011年修订)》、《设立外商投资印刷企业暂行规定》采取了相同的限制性措施，规定外商投资出版物印刷，必须由中方控股，且注册资本不得低于1000万元人民币。

对于只读类光盘复制，商务部外资司2008年出台的《外商投资准入管理指引手册》允许设立中外合资、中外合作只读类光盘复制单位，但中方必须控股或占主导地位，且必须获得《光盘复制经营许可证》。负面清单对于外商投资只读类光盘复制的要求相同，必须采取中方控股或占主导地位的合资、合作形式。

2. 零售业

对于文化、体育用品及器材专门零售，除《内地与香港关于建立更紧密经贸关系的安排》及其补充协议、《内地与澳门关于建立更紧密经贸关系的安排》及其补充协议的特别规定，负面清单仍采取了与《外商投资产业指导目录(2011年修订)》、《出版物市场管理规定》所列的限制性规定相同的措施，即：

- (1) 除同一香港、澳门服务提供者投资图书、报纸、期刊连锁经营的出资比例不得超过65%外，其他国家或地区投资者投资图书、报纸、期刊连锁经营，连锁门店超过30家的，不允许控股；
- (2) 除香港、澳门服务提供者可以独资、合资、合作形式提供音像制品(含后电影产品)分销外，限制其他国家或地区投资者投资音像制品(除电影外)的分销，仅限于合作形式。

3. 电信、广播电视和卫星传输服务

与《外商投资产业指导目录(2011年修订)》相同，对于电信、广播电视传输服务和卫星传输服务，负面清单也限制或禁止外商进入这些领域：

- (1) 限制外商投资电信、广播电视和卫星传输服务；

- (2) 禁止外商投资各级广播电台（站）、电视台（站）、广播电视频道（率）、广播电视传输覆盖网（发射台、转播台、广播电视卫星、卫星上行站、卫星收转站、微波站、监测台、有线广播电视传输覆盖网）。

4. 互联网和相关服务

对于互联网接入及相关服务、互联网信息服务和其他互联网服务，负面清单依然采取了与先前法律法规相同的保守态度：

- (1) 与《外商投资产业指导目录（2011 年修订）》相同，负面清单禁止外商投资新闻网站、网络视听节目服务、互联网上网服务营业场所、互联网文化经营（音乐除外）；
- (2) 2009 年出台的《新闻出版总署、国家版权局、全国“扫黄打非”工作小组办公室关于贯彻落实国务院〈“三定”规定〉和中央编办有关解释，进一步加强网络游戏前置审批和进口网络游戏审批管理的通知》规定，禁止外商以独资、合资、合作等方式在中国境内投资从事网络游戏运营服务。负面清单采取了相同的态度，禁止外商直接或间接从事和参与网络游戏运营服务。

5. 租赁业

对于出版物出租行业，除《内地与香港关于建立更紧密经贸关系的安排》及其补充协议、《内地与澳门关于建立更紧密经贸关系的安排》及其补充协议的特殊规定，负面清单仍采取了与《外商投资产业指导目录（2011 年修订）》、《出版物市场管理规定》相同的限制性措施：

- (1) 除同一香港、澳门服务提供者投资图书、报纸、期刊出租连锁经营的出资比例不得超过 65% 外，其他国家或地区投资者投资图书、报纸、期刊出租连锁经营，连锁门店超过 30 家的，不允许控股；
- (2) 除香港、澳门服务提供者可以独资、合资、合作形式提供音像制品（含后电影产品）出租外，限制其他国家或地区投资者投资音像制品（除电影外）的出租（限于合作）。

6. 新闻和出版业

《外商投资产业指导目录（2011 年修订）》严

格禁止外商投资新闻和出版业，负面清单对于新闻和出版业的禁止性规定与目录相同，包括：

- (1) 禁止投资新闻机构；
- (2) 禁止投资图书、报纸、期刊的出版业务；
- (3) 禁止投资音像制品和电子出版物的出版、制作业务。

7. 广播、电视、电影和影视录音制作业

该类包括广播、电视、电影和影视节目制作、电影和影视节目发行、电影放映、录音制作。《外商投资产业指导目录（2011 年修订）》将电影院的建设和经营，广播电视节目、电影的制作业务划入限制外商投资产业，广播电视节目制作经营公司、电影制作公司、发行公司、院线公司划入禁止外商投资产业，负面清单采取同样的态度，禁止或限制外资进入下述产业：

- (1) 限制投资电影院的建设和经营（中方控股）；
- (2) 限制投资广播电视节目、电影的制作业务限于合作）；
- (3) 禁止投资广播电视节目制作经营公司、电影制作公司、发行公司、院线公司。

8. 娱乐业

与《外商投资产业指导目录（2011 年修订）》相同，负面清单没有开放对于以下娱乐行业的外商投资限制：

- (1) 室内娱乐活动：禁止投资互联网上网服务营业场所（网吧活动）；
- (2) 游乐园：限制投资大型主题乐园的建设、经营；
- (3) 彩票活动：禁止投资博彩业（含赌博类跑马场）；
- (4) 其他娱乐业：禁止投资色情业。

三. 其他领域

相较于《外商投资产业指导目录（2011 年修订）》，文化艺术业是负面清单中新出现的投资

领域，包括文艺创作与表演、艺术表演场馆、图书馆与档案馆、文物及非物质文化遗产保护、博物馆、烈士陵园、纪念馆、群众文化活动、其他文化艺术业。负面清单仅要求外商投资文化艺术业须符合相关规定，没有其他限制性或禁止性规定。

四. 外商投资管理模式

为了实施《总体方案》关于外商投资的规定，上海市政府于 2013 年 9 月 29 日出台了《中国（上海）自由贸易试验区管理办法》、《中国（上海）自由贸易试验区外商投资项目备案管理办法》和《中国（上海）自由贸易试验区外商投资企业备案管理办法》。

上述办法明确规定由中国（上海）自由贸易试验区管理委员会（以下简称“上海自贸区管委会”）负责外商投资项目和外商投资企业备案管理，若外商计划投资的企业不属于负面清单禁止或限制的领域，申请人完成上海自贸区管委会的项目备案程序、外商投资企业设立备案程序后，即可向工商部门登记设立外商投资企业。另外，为了简化行政程序，上海自贸区工商部门还会同税务、质监等部门和管委会建立外商投资项目核准（备案）以及企业设立（变

更）一口受理机制，由工商部门统一接收和送达有关文书。

五. 简评

上海自贸区根据《总体方案》改革了外商投资管理模式，将大多数外商投资项目由核准制为备案制，简化了负面清单之外的外商投资企业的行政审批程序，一定程度上将有助于外国传媒娱乐产业投资者向上海自贸区汇集。

国务院《总体方案》与上海市政府出台的相关管理办法搭建了上海自贸区的外商投资管理的法规框架，文化部出台的《通知》则进一步细化了具体领域的准入门槛和审批级别，使得文化领域的外商投资更具有可操作性。

鉴于诸多传媒娱乐企业已落户上海自贸区，为了对接上海自贸区《总体方案》的规定，国家新闻出版广播电影电视总局等其他传媒娱乐行业主管部门将来也有可能出台类似于《通知》的规范性文件，细化外商投资传媒娱乐行业的准入限制、审批模式和具体流程等事项，进一步规范和促进上海自贸区传媒娱乐产业的发展。

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Media & Entertainment

China (Shanghai) Pilot Free Trade Zone Open to Certain Media and Entertainment Sectors

The opening ceremony of China (Shanghai) Pilot Free Trade Zone (“**Shanghai FTZ**”), held on September, 29, 2013, marks the formal operation of Shanghai FTZ. Liberalization in certain media and entertainment sectors is one of the highlights of the various reforms of Shanghai FTZ. According to media reports, many listed companies operating in media and entertainment sectors have chosen to set up subsidiaries in Shanghai FTZ, for example Time Warner¹ and Oriental Pearl², in order to seek opportunities in developing media and entertainment businesses, and capitalize on the opening policies of Shanghai FTZ.

On September 18, 2013, the State Council approved the Framework Plan of China (Shanghai) Pilot Free Trade Zone (the “**Framework Plan**”). The Framework Plan expressly provides that Shanghai FTZ will further open cultural service sectors and reform the FDI administration system. On September 29, 2013, with a view to implement the opening policy in the entertainment, culture and media sectors as provided in the Framework Plan, the Ministry of Culture promulgated the *Circular on Implementation of Administration Policies of*

Cultural Market in China (Shanghai) Pilot Free Trade Zone (the “**Circular**”), covering setup of foreign-invested enterprises in the entertainment industry, the making and sales of gaming consoles etc. On the same day, Shanghai municipal government released the *Special Administrative Measures on Foreign Investment in China (Shanghai) Pilot Free Trade Zone (Negative List) (2013)* (the “**Negative List**”). Judging by the Negative List, Shanghai FTZ still takes conservative positions with regards to some parts of media and entertainment sectors.

Based on all relevant regulations and policies of Shanghai FTZ released so far, the following are the summaries of policies of foreign investment in media and entertainment sectors in Shanghai FTZ:

I. Liberalized Sectors

As compared with the *Catalogue of Industries for Guiding Foreign Investment (as amended in 2011)*, Shanghai FTZ has cancelled restrictions on foreign investment in performance brokerage, entertainment venues, making and sales of gaming consoles; it has also simplified the relevant regulatory approval process for FDI. The changes would benefit development of media and entertainment operators in these sectors.

¹ http://www.cnstock.com/v_company/scp_dsy/tcsy_tt/201308/2719396.htm, last visit on 2013/9/30.

² http://ggjd.cnstock.com/company/scp_ggid/tjd_bbdj/201309/2754998.htm, last visit on 2013/9/30.

(1) *Performance Brokerage*

Pursuant to the *Catalogue of Industries for Guiding Foreign Investment (as amended in 2011)*, FDI in performance venue operation belongs to the encouraged category, provided however the Chinese partners shall be the controlling shareholders; FDI in performance brokerage enterprises belongs to the restricted category subject to the requirement that the Chinese partners are the controlling shareholders. The Framework Plan and the Circular cancels the equity ratio restrictions on FDI in performance brokerage enterprises in Shanghai FTZ and permits setup of Sino-foreign equity joint venture, Sino-foreign cooperative joint venture and wholly foreign-invested enterprises in performance brokerage and performance venue providing service for Shanghai market.

In connection with the regulatory approval process for setup of foreign-invested performance brokerage enterprises, the *Regulations on Administration of Commercial Performances* mandates submission of application to the Ministry of Culture via its provincial counterpart for the exercise. The Circular of the Ministry of Culture simplifies the approval procedure, delegating the approval power to the cultural regulatory authority in Shanghai. Pursuant to the Circular, setup of foreign-invested companies in performance venue operations only requires filing with the cultural regulatory authority within 20 days after receiving the business license. If a foreign-invested performance brokerage enterprise hosts a commercial performance in Shanghai, or if a foreign-invested performance venue operation company hosts a commercial performance in its own business venue, they shall only be required to submit an application to the cultural regulatory authority in Shanghai.

(2) *Entertainment Venue Service*

Pursuant to *Catalogue of Industries for Guiding Foreign Investment (as amended in 2011)*, FDI in

entertainment venue operation is limited to Sino-foreign equity or cooperative joint ventures. The Framework Plan and the Circular cancel the equity ratio restrictions on FDI in entertainment venue operation, permitting setup of Sino-foreign equity or cooperative joint ventures and wholly foreign-owned enterprises.

Pursuant to *Regulations on Administration of Entertainment Venues*, setup of entertainment venue operation companies in the form of a Sino-foreign equity or cooperative joint venture requires submitting an application to the competent cultural regulatory authorities of provincial government where the entertainment venue is located. The authority shall make a decision after conducting examination of the legal representative or responsible persons in association with the public security authority, followed by a field inspection. The Circular of the Ministry of Culture simplifies the procedure, requiring that setup of entertainment venue operation companies shall be decided by Shanghai cultural regulatory authority within 20 days after receipt of application.

(3) *Making and Sales of Gaming Consoles*

In 2006, the Ministry of Culture, in association with other authorities, released the *Opinion on Special Administration of Operational Sites of Electronic Games*, imposing a comprehensive prohibition on making and sales of electronic gaming equipment and its components in China. The Framework and the Circular cancel the prohibition on gaming consoles in Shanghai FTZ, where foreign-invested enterprises are permitted to invest in making and sales of electronic game equipment and the components in Shanghai FTZ; gaming equipment passing content-based censorship of cultural authorities can be sold in domestic market.

If a foreign-invested enterprise registered in Shanghai FTZ decides to sell the self-made gaming equipment in Shanghai FTZ, it shall

submit a content review application to the cultural authority in Shanghai, who shall make a decision within 20 days after receipt of the application. The basic information of the approved gaming equipment shall be filed with the Ministry of Culture and disclosed.

II. Prohibited and Restricted Sectors

Although Shanghai FTZ has liberalized the sectors of performance brokerage, entertainment venue service and gaming console in accordance with the Circular, the Negative List maintains restrictive measures on certain sectors of entertainment, culture and media industry, similar to those of the *Catalogue of Industries for Guiding Foreign Investment (as amended in 2011)* and other laws and regulations. The current restrictive measures on FDI remain applicable to FDI in those sectors subject to restrictive measures in Shanghai FTZ. However, the dynamic nature of the Negative List promises further adjustment in the future.

(1) *Printing and Recording Media Reproduction Industry*

In connection with the printing industry, the Negative List takes the same restrictive approach as the *Catalogue of Industries for Guiding Foreign Investment (as amended in 2011)* and *Interim Provisions on Establishment of Foreign-Invested Printing Enterprises*, providing that foreign investment in printing of publications shall have registered capital more than RMB 10,000,000 and the Chinese partners shall be the controlling shareholders.

In connection with the business of CD-ROM reproduction, the FDI division of the Ministry of Commerce published the *Guiding Handbook on Access Administration of Foreign Investment in 2008*, permitting setup of Sino-foreign equity and cooperative enterprises engaged in reproduction of CD-ROM, provided however, the Chinese partner shall be the controlling shareholder or command leading position and the enterprise

shall obtain the *Business License of Disc Reproduction Operation*. The Negative List maintains the same requirement in that respect.

(2) *Retail*

In connection with retailing of culture & sports products and equipment, except for special stipulations in the *Mainland and Hong Kong Closer Economic Partnership Arrangement*, *Mainland and Hong Kong Closer Economic Partnership Arrangement* and their supplements, the Negative List maintains restrictive measures comparable to the *Catalogue of Industries for Guiding Foreign Investment (as amended in 2011)* and *Provisions on the Administration of Publications Market*.

- (a) In the case of investment by any foreign investor from any country (other than HK or Macau where investors from the two regions are allowed to hold no more than 65% equity interest in chain stores selling books, newspaper and periodicals if the stores exceed 30 in total), the foreign investor is not allowed to hold controlling interest in such chain stores.
- (b) Except that Hong Kong or Macau service providers are permitted to provide distribution service for audio-visual products (including post-film products) in mainland through wholly-owned or equity/cooperative joint-venture form, investment in distribution of audio-visual products by investors from other countries or districts are limited to Sino-foreign cooperative operations.

(3) *Telecommunication, Radio and Television, Satellite Transmission Service*

Consistent with the *Catalogue of Industries for Guiding Foreign Investment (as amended in 2011)*, the Negative List restricts or forbids foreign investment in quite a few relevant sectors.

- (a) Foreign investments in telecommunication, radio and television, satellite transmission

services are restricted;

- (b) Foreign investments in all radio stations, television stations, radio and television channels (frequencies), radio and television transmission and coverage networks (transmitting stations, relay stations, radio and television satellites, satellite uplink stations, satellite receiving and transmitting stations, microwave stations, monitoring stations, and cable radio and television transmission and coverage networks) are prohibited.

(4) Internet & Related Services

The Negative List takes conservative position as to Internet access and related services, Internet information services and other internet services, comparable to existing laws and regulations:

- (a) The Negative List prohibits foreign investments in news websites, online audio and video programs, business premises for operation of Internet-access services, and operation of Internet cultural business (excluding music);
- (b) Pursuant to the *Notice of the General Administration of Press and Publication, National Copyright Administration and the Office of the National Task Force for "Eliminating Pornographic Publications and Crashing Down Illegal Publishing Activities" on Fully Implementing the State Council's "Three-Decision" Rules and the Interpretation thereof by State Commission Office for Public Sector Reform and further Strengthening Administration of Prior Review and Approval of Online Games and of Review and Approval of Imported Online Games*, which was promulgated in 2009, foreign investors are forbidden from investing or engaging in online games businesses in China in the form of wholly foreign-owned enterprises, Sino-foreign equity or cooperatives joint ventures. The Negative List takes the same

position, prohibiting foreign investors from directly or indirectly engaging in online game businesses.

(5) Leasing Industry

In connection with leasing of publications, except for special stipulations in *Mainland and Hong Kong Closer Economic Partnership Arrangement, Mainland and Hong Kong Closer Economic Partnership Arrangement* and their supplements, the Negative List takes the same restrictive measures as the *Catalogue of Industries for Guiding Foreign Investment (as amended in 2011)* and *Provisions on the Administration of Publications Market*.

- (a) In the case of investment by any foreign investor from any country or region (other than HK or Macau where investors from the two regions are allowed to hold no more than 65% equity interest in chain stores selling books, newspaper and periodicals if the stores exceed 30 in total), the foreign investor is not allowed to hold controlling interest in such chain stores.
- (b) Except that Hong Kong or Macau service providers are permitted to provide leasing services of audio-visual products (including post-film products) in the forms of wholly-owned, Sino-foreign equity or Sino-foreign cooperative joint venture enterprises, investments in leasing services of audio-visual products (excluding films) by investors from other countries or regions are limited to Sino-foreign cooperative joint ventures.

(6) News and Publication Industries

Catalogue of Industries for Guiding Foreign Investment (as amended in 2011) strictly prohibits foreign investments in news and publication industries. The Negative List has the same stipulations with those of the Catalogue, including:

- (a) Investments in news organizations are prohibited;
- (b) Investments in publication of books, newspapers, and periodicals are prohibited;
- (c) Investments in publication and production of audio-video products and electronic publications are prohibited.

(7) Radio, Television, Films and Video Recordings

This category includes radio, television, publication and production of film and video, film display and recordings. The *Catalogue of Industries for Guiding Foreign Investment (as amended in 2011)* categorizes construction and operation of cinema, production of radio, television programs and movies as the restricted category for foreign investment while radio and television program production & operation companies, movie production & distribution companies and cinema line companies as forbidden category for foreign investment. The Negative List takes the same position, restricting or prohibiting foreign investments as follows:

- (a) Foreign investments in construction and operation of cinemas are restricted (with Chinese parties must be the controlling shareholders);
- (b) Foreign investments in productions of radios, television programs and movies are restricted (limited to Sino-foreign cooperative joint ventures);
- (c) Foreign investments in companies engaged in production and operation of radio and television programs, movies, movie publication companies and cinema line companies are prohibited.

(8) Entertainment

Comparable to the *Catalogue of Industries for Guiding Foreign Investment (as amended in 2011)*, the Negative List maintains restrictions on the following entertainment sectors:

- (a) Indoor recreations: foreign investments in business venues for providing Internet-access services (Internet bar) are prohibited;
- (b) Amusement park: foreign investments in construction and operation of large theme parks are restricted;
- (c) Lottery: foreign investments in gambling and lottery are prohibited (including horse racing for gambling);
- (d) Others: foreign investments in pornography are prohibited.

III. Other Sectors

As compared with *Catalogue of Industries for Guiding Foreign Investment (as amended in 2011)*, the culture and art industries are the new features of the Negative List, including artistic creation and performance of literature and art, art performance venue, library and archives, conservation of cultural relics and intangible cultural heritage, museum, martyr cemetery, memorial hall, mass cultural activities, other culture and art industries. The Negative List only mandates that foreign investments in the culture and art industries shall be in accordance with relevant laws and regulations without attaching any string of restrictions or prohibitions.

IV. Administration of Foreign Investment

In order to implement the Framework Plan in terms of foreign investment administration, Shanghai municipal government promulgated the *Administrative Measures of China (Shanghai) Pilot Free Trade Zone, Administrative Measures of Filing of Foreign Investment Project in China (Shanghai) Pilot Free Trade Zone* and *Administrative Measures of Filing of Foreign Investment Enterprise in China (Shanghai) Pilot Free Trade Zone*.

The above measures expressly provide that the Administrative Commission of China (Shanghai)

Pilot Free Trade Zone (the “**Shanghai FTZ Commission**”) shall take the responsibilities for accept filings for foreign investment projects and foreign-invested enterprises. If the enterprises which the foreign investors contemplate to invest do not belong to the prohibited or restricted categories under the Negative List, the applicant can directly register the foreign-invested enterprises in the industry and commerce administration authority in Shanghai after the filings. In addition, to the end of simplifying the administrative process, the industry and commerce authority in Shanghai FTZ shall cooperate with the tax authorities, quality supervision authorities and Shanghai FTZ Commission and set up “one-stop” window whereby the industry and commerce authority shall receive and issue all the related documents.

V. Comment

In accordance with the Framework Plan, Shanghai FTZ has reformed the administrative process with regards to foreign investment by transforming the approval-based regulation methods to filing-based regulation methods. Such transformation would somehow attract foreign

investors in media and entertainment industries to gravitate towards Shanghai FTZ.

The Framework Plan of the State Council and the related administrative measures promulgated by Shanghai municipal government have established the administrative frame of foreign investment, while the Circular issued by the Ministry of Culture details the requirements of investment and approval level in specific sectors, making the foreign investment in cultural sectors more practicable.

As many media and entertainment enterprises choose to set up subsidiaries in Shanghai FTZ, such authorities as the General Administration of Press and Publication, Radio, Film and Television and other authorities in media and entertainment industries are expected to promulgate more regulations, in order to implement the stipulations in the Framework Plan in Shanghai FTZ. The new regulations are expected to clarify restrictions, approval process, procedural issues and other matters related to foreign investments in the media and entertainment industries, further promoting the development of media and entertainment industries in Shanghai FTZ.

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