

中国银行业监督管理委员会（以下简称“银监会”）公布了《中国银监会外资银行行政许可事项实施办法（2015 修订）》（以下简称“《**外资银行行政许可办法**》”）对 2014 年的《外资银行许可办法》进行了大幅度的修订。国家发展和改革委员会（以下简称“**国家发改委**”）发布了《政府核准和备案投资项目管理条例（征求意见稿）》（以下简称“《**核准备案管理条例**》”），将首次采用行政法规形式规范政府对企业投资项目的核准、备案行为。工业和信息化部（以下简称“**工信部**”）公布了《工业和信息化部关于放开在线数据处理与交易处理业务（经营类电子商务）外资股比限制的通告》（工信部通[2015]196 号）（以下简称“**196 号文**”），取消在线数据处理与交易处理业务（经营类电子商务）外资股比限制。

一、银监会再次修订《外资银行许可办法》

根据 2015 年 1 月 1 日起施行的《中华人民共和国外资银行管理条例（2014 年第二次修订）》（以下简称“**2015 年《外资银行管理条例》**”），银监会于 2015 年 6 月 5 日公布了新修订的《外资银行行政许可办法》，对 2014 年的《外资银行许可办法》中过半数的条文进行了修订。

（一）背景

为规范银监会及其派出机构对外资金融机构的行政许可行为，明确行政许可事项、条件、操作流程和期限，保护申请人合法权益，银监会制定了《外资金融机构行政许可事项实施办法》，该实施

办法于 2006 年 2 月 1 日起施行。

银监会曾于 2013 年 9 月 30 日公布了《外资银行行政许可办法》（征求意见稿）公开征求意见，以对 2006 年 2 月 1 日开始实施的《外资金金融机构行政许可事项实施办法》进行修订。在广泛征求社会各界意见的基础上，经修订完善的《外资金金融机构行政许可事项实施办法》更名为《外资银行行政许可办法》，与 2014 年 9 月 11 日开始施行。

为了落实国务院提出的进一步简政放权、改革行政审批制度的要求，银监会再次对《外资银行行政许可办法》进行了修订，并于 2015 年 4 月 10 日公布了《外资银行行政许可办法》（征求意见稿）公开征求意见。2015 年《外资银行行政许可办法》于 2015 年 6 月 5 日起施行。

（二）法律点评

银监会本次修订值得关注的内容如下：

首先，为了与《外资银行管理条例》修订相衔接，2015 年《外资银行行政许可办法》取消了设立外国银行分行需在中国境内已经设立代表处 2 年以上的条件要求；取消了原外商独资银行、中外合资银行总行需“无偿拨给不少于 1 亿元人民币或等值自由兑换货币”作为下设分行营运资金的条件要求；对外资银行营业性机构初次申请经营人民币业务的条件由原“提出申请前在中国境内开业 3 年以上”，修改为“提出申请前在中国境内开业 1 年以上”等。

其次，划分银监会与银监局的审批权限，银监

会将部分审批权限下放至银监局。需要报送银监会审批的事项具体可分为如下四类：第一类系由银监会受理、审查和决定的申请事项，如“银监会直接监管的外资银行”（系本次修订新增的概念，它是指在 15 个以上省、自治区、直辖市设立一级分支机构的外资法人银行，包括外商独资银行、中外合资银行、外资银行营业性机构，下同）的董事长、行长等对经营管理具有决策权或者对风险控制起重要作用的人员的任职资格核准的申请；外商独资银行、中外合资银行、外国银行分行变更名称的申请。第二类系“银监会直接监管的外资银行”的变更注册资本；经营人民币业务或者扩大人民币业务服务对象范围等的申请事项。第三类系非银监会直接监管的其他外商独资银行、中外合资银行的申请事项，如外商独资银行、中外合资银行解散申请；外商独资银行、中外合资银行变更股东或者调整股东持股比例的申请；外商独资银行、中外合资银行发行债务、资本补充工具。第四类系由银监局受理和初审，银监会审查和决定的申请事项，如非银监会直接监管的外商独资银行、中外合资银行董事长、行长（首席执行官、总经理）任职资格核准的申请。2015 年《外资银行行政许可办法》实施前，绝大多数审批事项均需要先报银监局初审后再报送银监会终审决定。而根据新办法，对于上述第三、四类申请事项，申请人仍然需要向所在地银监局提交申请，由所在地银监局受理和初审，银监会审查和决定；但对于第一、二类申请事项，申请人应直接向银监会提交申请。

与此同时，部分审批事项下放为由银监局直接负责受理、审查和决定，例如：非银监会直接监管的其他外商独资银行、中外合资银行变更注册资本、经营人民币业务或者扩大人民币业务服务对象范围的申请；外国银行分行变更营运资金的申请、外国银行代表处变更名称的申请、外商独资银行、

中外合资银行开业的申请、外国银行分行开业申请、外国银行设立代表处；随机构开业初次任命的外商独资银行、中外合资银行董事长、行长（首席执行官、总经理）任职资格。

再次，2015 年《外资银行行政许可办法》仅要求对管理型支行（指除了对自身以外，对其他支行或支行以下分支机构在机构管理、业务管理、人员管理等方面具有部分或全部管辖权的支行）行长任职资格进行核准，取消对经营型支行（指不对其他支行或者支行以下分支机构承担管理责任的支行）行长的任职资格进行核准。

最后，根据 2015 年《外资银行行政许可办法》的规定，具有高级管理人员任职资格且未连续中断任职 1 年以上的拟任人在同一法人机构内，同一职务平行调整或者改任较低职务的，无须提交原岗位离任审计。

（三）关注要点

银监会于 2015 年 3 月 12 日公布《外资银行管理条例实施细则（修订征求意见稿）》公开征求意见。伴随着新修订的 2015 年《外资银行管理条例》的实施，与之相配套的立法及实践值得关注。

二、《核准备案管理条例》征求意见

2015 年 6 月 12 日，国家发改委发布了《核准备案管理条例》公开征求意见草案。《核准备案管理条例》适用于各类企业在境内不使用政府投资建设的固定资产投资项项目，以及中国境内各类境内企业及其通过境外企业或机构实施的境外投资项目。

（一）背景

2004 年 7 月 16 日，国务院颁布《国务院关于投资体制改革的决定》（以下简称“《改革决定》”），改革政府对企业投资的管理制度，对于企业不使用

政府投资建设的项目，一律不再实行审批制，区别不同情况实行核准制和备案制。同时，为严格限定实行政府核准制的范围，国务院制定了《政府核准的投资项目目录（2004 年本）》。

对于外商投资项目而言，根据《改革决定》和《政府核准的投资项目目录（2004 年本）》，国家发改委于 2004 年 10 月 9 日公布了《外商投资项目核准暂行管理办法》，自此，我国对外商投资项目统一实行核准制。《外商投资项目核准暂行管理办法》依据《外商投资产业指导目录》的分类（即鼓励类、允许类、限制类）、总投资（包括增资额，下同）的金额划分外商投资项目的核准机关。对于总投资 1 亿美元及以上的鼓励类、允许类项目、以及总投资 5000 万美元及以上限制类项目均须报国家发改委核准。未超过上述总投资金额的鼓励类、允许类、限制类项目由地方发改委核准，其中限制类项目只能由省级发改委核准。2010 年 5 月 4 日起，国家发改委下放鼓励类、允许类项目的核准权限，对于总投资（包括增资）3 亿美元以下的鼓励类、允许类项目，除《政府核准的投资项目目录》规定需由国务院有关部门核准的之外，均由省级发改委核准。

2014 年 5 月 20 日国家发改委颁布《外商投资项目核准和备案管理办法》（以下简称“**《核准和备案办法》**”），据此，我国对外商投资项目由原来的单一核准制变革为分别实行核准制和备案制两种方式。《核准和备案办法》依据《外商投资产业指导目录》的分类、总投资额、《政府核准的投资项目目录》划分实行核准制的外商投资项目和实行备案制的外商投资项目。实行核准制的外商投资项目的范围为：（1）由国家发改委核准：有中方控股（含相对控股）要求的总投资 3 亿美元及以上鼓励类项目；总投资 5000 万美元及以上限制类（不含房地产）项目；（2）由省级发改委核准：限制类中的房

地产项目和总投资 5000 万美元以下的其他限制类项目；（3）由市级发改委核准：有中方控股（含相对控股）要求的总投资（含增资）3 亿美元以下鼓励类项目；（4）上述项目之外属于《政府核准的投资项目目录》所列的外商投资项目，按照《政府核准的投资项目目录》的规定核准。实行核准制的外商投资项目以外的外商投资项目由地方政府主管部门备案。此次国家发改委发布《核准备案管理条例》，将首次采用行政法规形式规范政府对企业投资项目的核准、备案行为。

（二） 法律点评

与现行的《核准和备案办法》相比，《核准备案管理条例》有以下变化：

首先，《核准备案管理条例》最终通过后，将作为行政法规颁布，比 2004 年及 2014 年的两个部门规章的立法层级要高，显示了政府对立项管理的重视程度有所加强。

第二，《核准备案管理条例》统一适用于外资企业在中国境内的投资项目、内资企业在中国境内的投资项目、以及中国企业境外投资项目三种情形；换言之，发改委系统在立项管理过程中不再区分内资与外资，符合国民待遇原则。

第三，对于实行核准制的外商投资项目而言，《核准备案管理条例》规定的审查内容比《核准和备案办法》繁复。项目核准机关除了需要额外审查外商投资项目是否符合《外商投资产业指导目录》、《中西部地区外商投资优势产业目录》、国家资本项目管理和外债管理的有关规定；符合发展规划、产业政策及准入标准；合理开发并有效利用资源；不影响国家安全和生态安全；对公众利益不产生重大不利影响外，还应审查该项目是否符合国家相关法律法规和宏观调控政策、技术政策。

（三） 关注要点

国务院尚未公布根据《核准备案管理条例》制定的《政府核准的投资项目目录》，新版目录的范围是否会缩小或者扩大《政府核准的投资项目目录（2014 年本）》的范围，值得关注。

另外，《核准备案管理条例》提出建立投资项目在线审批监督平台、建立项目统一代码制度、投资项目信息在线报备制度、异常信用记录制度、黑名单制度等。该等制度的建立进展及成效值得期待。

三、 工信部取消在线数据处理与交易处理业务（经营类电子商务）的外资股比限制

2015 年 6 月 19 日，工信部发布 196 号文，决定在中国（上海）自由贸易试验区（以下简称“上海自贸区”）开展试点的基础上，在全国范围内放开在线数据处理与交易处理业务（经营类电子商务）的外资股比限制，外资持股比例可至 100%，该文自发布之日起施行。

（一） 背景

在线数据与交易处理业务是指利用各种与通信网络相连的数据与交易/事务处理应用平台，通过通信网络为用户提供在线数据处理和交易/事务处理的业务。在线数据和交易处理业务包括交易处理业务、电子数据交换业务和网络/电子设备数据处理业务。在线数据与交易处理业务属于增值电信业务。

我国对于外商投资增资电信业务经历了从禁止到逐渐放开的过程。

1998 年 1 月 1 日起，电信业务的经营属于禁止外商投资的项目。之后为了履行我国加入世界贸易组织的承诺，我国决定自 2001 年 12 月 11 日起允

许外商投资对于增值电信业务，外资比例不超过 30%；不迟于 2002 年 12 月 11 日允许外资比例不超过 49%；不迟于 2003 年 12 月 11 日允许外资比例达 50%。从 2002 年 1 月 1 日起，经营增值电信业务的外商投资电信企业的外方投资者在企业中的出资比例，最终不得超过 50%。之后，外商投资增值电信业务的外资比例最终不得超过 50%的限制未有进一步放松。

2013 年成立上海自贸区后，我国在该区内试验逐渐放开在线数据处理与交易处理业务（经营类电子商务）的外资比例。具体步骤为：2014 年 1 月 6 日起，在线数据处理与交易处理业务（经营类电子商务）外资比例允许增加至不超过 55%；2015 年 1 月 13 日起，外资比例进一步允许增加至 100%。

2015 年 4 月 10 日修订的《外商投资产业指导目录》仍保留了外商投资增值电信业务的外资比例不超过 50%的限制，但与此同时，吸取了上海自贸区的试点经验，将其中的电子商务作为例外，不再对外资持股比例作出任何限制要求。正是在此背景下，工信部发布 196 号文。

（二） 法律点评

虽然 196 号文取消了在线数据处理与交易处理业务（经营类电子商务）的外资股比限制，外国投资者在申请在线数据处理与交易处理业务（经营类电子商务）许可时，仍应执行《外商投资电信企业管理规定》规定的其他许可条件要求及相应审批程序。其他许可条件主要包括外商投资电信企业的最低注册资本（即经营全国的或者跨省、自治区、直辖市范围的增值电信业务，其注册资本最低限额为 1000 万元人民币，经营省、自治区、直辖市范围内的增值电信业务，其注册资本最低限额为 100 万元人民币）；外方主要投资者的资格（即应当具有经

营增值电信业务的良好业绩和运营经验)。

(三) 关注要点

国务院总理李克强在 6 月 4 日召开的国务院常务会议上提出，要推动特殊股权结构类创业企业在境内上市¹。196 号文被认为是推动 VIE 企业自境外退市回归中国境内上市的重大利好。

与此同时，尽管 196 号放开了经营类电子商务公司当中的外资股比例要求，由于外方主要投资者

仍应当具有经营增值电信业务的良好业绩和运营经验，这使得部分境外私募股权投资基金或风险投资基金可能无法满足此项条件。因此，中国电信主管部门能否进一步降低外商投资在线数据处理与交易处理业务（经营类电子商务）的准入条件值得关注。

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¹
http://www.gov.cn/zhengce/2015-06/05/content_2873601.htm

The China Banking Regulatory Commission (“**CBRC**”) released the *Measures for the Implementation of Administrative Licensing of Foreign-funded Banks (2015 Revision)* (the “**Measures for Administrative Licensing of Foreign-funded Banks**”), which significantly revised the *Measures for Administrative Licensing of Foreign-funded Banks (2014 Revision)*.

The National Development and Reform Commission (“**NDRC**”) released the *Regulation on the Administration of Investment Projects Subject to Government Verification and Approval and Investment Projects Subject to Government Record-filing (Draft for Comments)* (the “**Regulation on Verification and Record-filing**”), which will be the first administrative regulation applicable to the government’s administration of investment projects by way of verification and approval and record-filing.

The Ministry of Industry and Information Technology (“**MIIT**”) released the *Circular of the Ministry of Industry and Information Technology on Liberalizing the Restrictions on Foreign Shareholding Percentage in Online Data*

Processing and Transaction Processing Business (For E-commerce Business) (MIIT Circular [2015] No. 196) (the “**No. 196 Circular**”) to remove restrictions on foreign shareholding in E-commerce.

1. CBRC Further Revised the Measures for Administrative Licensing of Foreign-funded Banks

In accordance with the *Regulation of the People’s Republic of China on the Administration of Foreign-funded Banks (2nd Revision in 2014)* effective from January 1, 2015 (the “**2015 Regulation on Foreign-funded Banks**”), the CBRC released the revised Measures for Administrative Licensing of Foreign-funded Banks on June 5, 2015, which significantly revised the 2014 *Measures for Administrative Licensing of Foreign-funded Banks*.

1.1 Background

CBRC formulated the *Measures for the Implementation of Administrative Licensing of Foreign-funded Financial Institutions*, which became effective from February 1, 2006. Such measures seek to regulate the administrative

licensing of foreign-funded financial institutions by CBRC and its branches, clarify the matters subject to administrative licensing and the conditions, operational procedures and time limits for administrative licensing, and protect applicants' legitimate rights and interests.

On September 30, 2013, CBRC released the *Measures for the Implementation of Administrative Licensing of Foreign-funded Banks (Draft for Comments)* to seek public comments on the revisions to the *Measures for the Implementation of Administrative Licensing of Foreign-funded Financial Institutions*. Based upon the comments from various sectors, the *Measures for the Implementation of Administrative Licensing of Foreign-funded Financial Institutions* was revised and renamed the *Measures for the Implementation of Administrative Licensing of Foreign-funded Banks*, and became effective on September 11, 2014.

To respond to the demand of the State Council to further streamline administration and delegate power to lower levels and to reform the administrative licensing system, CBRC further revised the *Measures for Administrative Licensing of Foreign-funded Banks* and released the draft for comments on April 10, 2015. The 2015 *Measures for Administrative Licensing of Foreign-funded Banks* was implemented from June 5, 2015.

1.2 Legal Review

The highlights of this revision by CBRC are as follows.

First, to maintain alignment with the 2015 *Regulation on Foreign-funded Banks*, the 2015 *Measures for Administrative Licensing of Foreign-funded Banks* provides in relevant parts as follows: (i) for establishing a branch of a foreign bank, removal of the requirement to maintain a representative office in China for two years; (ii) for the working capital of the branches, removal of the requirement that the head office of the wholly foreign-owned bank or Chinese-foreign joint venture bank must "allocate without compensation not less than RMB100 million or the equivalent amount of freely convertible currency"; (iii) the condition for the first application of a foreign-funded bank to operate the Renminbi business was changed from "having been in business operation within China for three years or longer prior to the application" to "having been in business operation within China for one year or longer prior to the application".

Second, the examination and approval authority was divided between CBRC and local banking regulatory bureaus. Matters subject to examination and approval by CBRC may be classified into the following four categories.

The first category consists of matters to be submitted to, examined and decided by CBRC, such as applications for the verification and approval of the qualification of chairmen, presidents and other personnel who have decision-making power over business and management matters or who play an important role in the risk control of "foreign-funded banks

under the direct supervision of CBRC” and applications for changing the names of wholly foreign-owned banks, Sino-foreign joint venture banks, or branches of foreign banks. The term “foreign-funded banks under the direct supervision of CBRC” was introduced in this revision, and means foreign-funded banks, including wholly foreign-owned banks, Sino-foreign joint venture banks and institutions of foreign-funded banks, that establish tier-one branches in 15 or more provinces, autonomous regions and/or municipalities.)

The second category consists of applications for changing the registered capital, applications for operating Renminbi business or expanding the scope of recipients of Renminbi business and other applications made by “foreign-funded banks under the direct supervision of CBRC”.

The third category consists of applications made by the other wholly foreign-owned banks and Sino-foreign joint venture banks that are not under the direct supervision of CBRC, such as the following applications by wholly foreign-owned banks and Sino-foreign joint venture banks: dissolution, change in shareholders or adjustments to shareholding percentages of shareholders, and issuing debts and capital replenishing instruments.

The fourth category consists of matters to be submitted to and preliminarily examined by local banking regulatory bureaus and to be examined and decided by CBRC, such as applications for the verification and approval of the qualification of chairmen, presidents (chief

executive officers or general managers) of wholly foreign-owned banks and Sino-foreign joint venture banks that are not under the direct supervision of CBRC. Prior to the implementation of the 2015 Measures for Administrative Licensing of Foreign-funded Banks, most applications must be submitted first to the local banking regulatory bureaus for preliminary examination and then to CBRC for final examination and decision.

Under the 2015 Measures for Administrative Licensing of Foreign-funded Banks, applications in categories (3) and (4) must still be submitted first to local banking regulatory bureaus for preliminary examination and then to CBRC for examination and decision, but applications in categories (1) and (2) can be submitted to CBRC directly.

Meanwhile, CBRC delegated the examination and approval authority for certain matters to local banking regulatory bureaus, such as applications for the following actions: (1) changing registered capital and operating Renminbi business or expanding the scope of recipients of Renminbi business made by other wholly foreign-owned banks and Chinese-foreign joint venture banks that are not under the direct supervision of CBRC; (2) modifying working capital made by branches of foreign banks, (3) changing names made by the representative offices of foreign banks; commencement of business operations made by wholly foreign-owned banks and Sino-foreign joint venture banks;(4)

commencement of business operations made by branches of foreign banks;(5) establishment of representative offices made by foreign banks; (6) verification of the qualification of the chairmen or presidents (chief executive officers or general managers) of wholly foreign-owned banks or Chinese-foreign joint venture banks who are appointed for the first time upon the establishment of the same.

Third, the 2015 Measures for Administrative Licensing of Foreign-funded Banks only require verification of the qualification of presidents of managing sub-branches (meaning sub-branches that have partial or complete jurisdiction over the management of organizations, business, personnel, etc. of such sub-branches as well as other sub-branches or offices under such sub-branches), and removed the requirement for verification of the qualification of presidents of operating sub-branches (meaning sub-branches not bearing management duties for other sub-branches or offices under sub-branches).

Fourth, the 2015 Measures for Administrative Licensing of Foreign-funded Banks provide that an audit report for departure is not required where a proposed person, who is qualified to hold the post of senior executive and has not ceased to hold the position for one consecutive year or longer, is transferred to another position within the same legal person at the same or lower level.

1.3 Next Step

CBRC released the *Implementing Rules for the Regulation of the People's Republic of China on the Administration of Foreign-funded Banks (Revision Draft for Comments)* on March 12, 2015. It is worth focusing on the legislation and practice in support of the implementation of the 2015 Regulation on Foreign-funded Banks.

2. NDRC Seeks Comments on the Regulation on Verification and Record-filing

On June 12, 2015, NDRC released the *Regulation on Verification and Record-filing (Draft for Comments)*. The *Regulation on Verification and Record-filing* will govern fixed asset investment projects that are constructed within China by various types of enterprises without using government investment funds, and outbound investment projects that are constructed by various types of Chinese domestic enterprises on their own and via overseas enterprises or institutions.

2.1 Background

On July 16, 2004, the State Council issued the *Decision of the State Council on Investment System Reform* (the “**Decision on Reform**”) to reform the government’s administration system for enterprise investments. It provides that projects not using government investment funds will be subject to the verification and approval system or the recording-filing system (as the case may be), instead of the examination and approval system. Meanwhile, the State Council also formulated the *Catalogue of Investment Projects Subject to Verification*

and Approval by the Government (2004) to strictly limit the scope of investment projects subject to verification and approval by the government.

With respect to foreign investment projects, in accordance with the Decision on Reform and the *Catalogue of Investment Projects Subject to Verification and Approval by the Government (2004)*, NDRC issued the *Interim Measures for the Administration of Verification and Approval of Foreign Investment Projects* on October 9, 2004. Since then, China adopted a unified verification and approval system for the administration of foreign investment projects. The *Interim Measures for the Administration of Verification and Approval of Foreign Investment Projects* identified the verification and approval authorities in charge of the administration of foreign investment projects according to the classification under the *Catalogue of Industries for Guiding Foreign Investment* (namely, encouraged, permitted and restricted categories) and the total investment (including incremental amount of the investment). For encouraged projects or permitted projects with total investment not less than USD100 million and for restricted projects with total investment not less than USD50 million, project applications shall be verified and approved by NDRC. For encouraged projects or permitted projects with total investment less than USD100 million and for restricted projects with total investment less than USD50 million, project applications shall be verified and approved by the local branches of NDRC, in which restricted

projects shall only be verified and approved by provincial branches of NDRC. Since May 4, 2010, NDRC delegated the verification and approval authority for encouraged projects and permitted projects with total investment less than USD300 million to provincial branches of NDRC, except as otherwise required to be verified and approved by departments of the State Council under the *Catalogue of Investment Projects Subject to Verification and Approval by the Government*.

NDRC issued the *Measures for the Administration on Verification and Approval and Record-filing of Foreign Investment Projects* (the “**Measures on Verification and Record-filing**”) on May 20, 2014, whereby the government changed the unified verification and approval system to the verification and approval system and record-filing system for the administration of foreign investment projects. The Measures on Verification and Record-filing classified foreign investment projects into: (1) the category of foreign investment projects subject to verification and approval and (2) the category of foreign investment projects subject to record-filing, according to the (i) classification under the *Catalogue of Industries for Guiding Foreign Investment*, (ii) the total investment and (iii) the classification under the *Catalogue of Investment Projects Subject to Verification and Approval by the Government*.

Foreign investment projects subject to verification and approval include: (1) projects

subject to the verification and approval by NDRC: encouraged projects with a total investment of USD300 million or more that must be controlled (including relatively controlled) by Chinese shareholders, and restricted projects with a total investment of USD 50million or more (excluding real estate projects); (2) projects subject to verification and approval by provincial branches of NDRC: real estate projects under restricted industries and other restricted projects with a total investment of less than USD50 million; (3) projects subject to verification and approval by municipal branches of NDRC: encouraged projects with a total investment of less than USD300 million that must be controlled (including relatively controlled) by Chinese shareholders; and (4) foreign investment projects other than the foregoing that are listed in *Catalogue of Investment Projects Subject to Verification and Approval by the Government*, which shall be subject to verification and approval in accordance with the relevant provisions thereof.

Those foreign investment projects that do not fall in the scope of projects subject to verification and approval shall be subject to record-filing by the competent departments of local governments. The *Regulation on Verification and Record-filing* issued by NDRC is the first administrative regulation to regulate the administration of foreign investment projects by way of verification and approval as well as record-filing by the government.

2.2 Legal Review

Compared to the Measures on Verification and Record-filing currently in effect, the Regulation on Verification and Record-filing is different in the following aspects.

First, the Regulation on Verification and Record-filing will be enacted as an administrative regulation, with a higher position in the legislative hierarchy than that of the two departmental regulations issued in 2004 and 2014, respectively. This demonstrates that the government is paying more attention to the administration of project approval.

Second, the Regulation on Verification and Record-filing will be generally applicable to investment projects within China by foreign-invested enterprises, investment projects within China by domestic enterprises and outbound investment projects by Chinese enterprises. This means that NDRC and its branches will follow the national treatment principle to treat project applications made by domestic enterprises and foreign-invested enterprises equally.

Third, with respect to foreign investment projects subject to verification and approval, the Regulation on Verification and Record-filing introduces more conditions, compared to the Measures on Verification and Record-filing. Such conditions include examining whether the foreign investment project is in compliance with the *Catalogue of Industries for Guiding Foreign Investment*, the *Catalogue of Priority*

Industries for Foreign Investment in Central and Western China and relevant provisions of the State on capital account management and external debt management; whether the project is in compliance with development planning, industry policies and industry entry standards; whether the project will rationally develop and effectively utilize resources; whether the project will not affect national security and ecological security; whether the project will not have any material adverse impact on public interests. The verification and approval authorities must additionally examine whether the project is in compliance with relevant laws and regulations, macro control policies and technical policies of the State.

2.3 Next Step

The State Council has not released the new *Catalogue of Investment Projects Subject to Verification and Approval by the Government* revised in connection with the Regulation on Verification and Record-filing. We will monitor whether the new Catalogue will expand or contract the scope of the 2014 Catalogue.

In addition, the Regulation on Verification and Record-filing introduces online examination and approval regulatory platforms for investment projects, a unified code system for investment projects, a system of online submission of investment project information for record-filing, a system of abnormal credit records and a "blacklist" system. We will monitor the progress and effects of such systems.

3. MIIT Removed Restrictions on Foreign Shareholding in Online Data Processing and Transaction Processing Business (For E-commerce Business)

MIIT issued the No. 196 Circular on June 19, 2015, deciding to, on the basis of the pilot program in the China (Shanghai) Pilot Free Trade Zone ("**Shanghai FTZ**"), liberalize the restrictions on foreign shareholding in E-commerce nationwide, which foreign shareholding now be up to 100%. The No. 196 Circular is effective from the date of issuance.

3.1 Background

The online data and transaction processing business refers to the provision of online data processing and transaction/matter processing services for users through the communication network by means of various data and transaction/matter processing application platforms that are connected to the communication network. The online data and transaction processing services include transaction processing services, electronic data interchange services and network/electronic equipment data processing services. Online data and transaction processing is a value-added telecommunications business.

Foreign investment in value-added telecommunications business has evolved from prohibition to gradual liberalization in China.

Since January 1, 1998, telecommunications businesses were classified as prohibited foreign

investment projects. From December 11, 2001, to implement China's commitments upon joining the World Trade Organization, China permitted foreign investment in value-added telecommunications businesses with foreign shareholding not exceeding 30% and promised to permit foreign shareholding not exceeding 49% no later than December 11, 2002, and to permit foreign shareholding up to 50% no later than December 11, 2003. From January 1, 2002, foreign shareholding cannot exceed 50% for foreign-invested telecommunications enterprises engaged in the value-added telecommunications business. Since then, this restriction on foreign shareholding has not been further liberalized.

After the establishment of the Shanghai FTZ in 2013, China gradually liberalized the restriction on foreign shareholding in E-commerce in the Shanghai FTZ. From January 6, 2014, foreign shareholding in E-commerce was permitted to be increased to up to 55%. From January 13, 2015, foreign shareholding was further permitted to be increased to 100%.

Under the *Catalogue of Industries for Guiding Foreign Investment* revised on April 10, 2015, foreign shareholding in value-added telecommunications businesses still cannot exceed 50%. Due to the experience of the pilot program in the Shanghai FTZ, however, the restriction on foreign shareholding in E-commerce was removed. MIIT issued No. 196 Circular accordingly.

3.2 Legal Review

Though No. 196 Circular removed restrictions on the foreign shareholding in E-commerce, when applying for the permit for operating the same, foreign investors must still satisfy other conditions and follow the relevant examination and approval procedures as required by the *Provisions on the Administration of Foreign-invested Telecommunications Enterprises*. The conditions mainly include: (i) the minimum registered capital for a foreign-invested telecommunications enterprise (specifically, for operating value-added telecommunications services nationwide or in more than one province, autonomous region, or municipality, the registered capital is no less than RMB10 million; for operating value-added telecommunications services within a province, autonomous region, or municipality, the registered capital is no less than RMB1 million); and (ii) the qualification of the primary foreign investors (specifically, the foreign investors must have a good record of and experience in operating value-added telecommunications businesses).

3.3 Next Step

At the executive meeting of the State Council held on June 4, Li Keqiang, the Prime Minister, said that the government would promote domestic listings of start-up firms with "special ownership structure"¹. No. 196 Circular is considered as a major positive policy to promote the delisting of VIEs from overseas stock exchanges and to return to the domestic

¹ http://www.gov.cn/zhengce/2015-06/05/content_2873601.htm

stock exchanges for listing.

At the same time, though No. 196 Circular liberalized restrictions on foreign shareholding in E-commerce, the primary foreign investor must have a good record of and experience in operating value-added telecommunications

businesses. Certain overseas private equity funds or venture capital funds may not satisfy these conditions. It is worth monitoring whether the Chinese telecommunications authorities will further liberalize the conditions for access by foreign investors to E-commerce.

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