

国务院决定在广东省范围内进一步扩大对香港特别行政区（以下简称“香港”）、澳门特别行政区（以下简称“澳门”）服务提供者的优惠政策。中国银行业监督管理委员会（以下简称“银监会”）对《中华人民共和国外资银行管理条例实施细则》（以下简称“《外资银行管理条例实施细则》”）进行了修订。为进一步促进外商投资租赁业发展，商务部对《外商投资租赁业管理办法》作出了补充规定（以下简称“补充规定”）。

一、 国务院决定在粤扩大对港澳服务业开放

为了履行《〈内地与香港关于建立更紧密经贸关系的安排〉关于内地在广东与香港基本实现服务贸易自由化的协议》和《〈内地与澳门关于建立更紧密经贸关系的安排〉关于内地在广东与澳门基本实现服务贸易自由化的协议》（以下统称“《协议》”），2015 年 3 月 3 日，国务院颁布了《国务院关于在广东省对香港、澳门服务提供者暂时调整有关行政审批和准入特别管理措施的决定》（以下简称“《决定》”），在广东省范围内进一步扩大对香港、澳门服务提供者的优惠政策。

（一） 背景

2003 年内地分别与香港、澳门签订《内地与香港关于建立更紧密经贸关系的安排》、《内地与澳门关于建立更紧密经贸关系的安排》（Closer Economic Partnership Arrangement，以下简称“CEPA”）。截至 2013 年 8 月，为进一步提高内地

与香港、澳门的经贸交流与合作的水平，内地已分别与香港、澳门就 CEPA 各自签订了十个补充协议。

2014 年 12 月 18 日，为推动内地与香港、内地与澳门基本实现服务贸易自由化，内地、香港、澳门决定就内地在广东省与香港、澳门基本实现服务贸易自由化签署《协议》。为了履行《协议》，2015 年 3 月 3 日，国务院颁布了《决定》，决定在广东省暂时调整有关法规、规章规定的行政审批和准入特别管理措施。

（二） 法律点评

依据《协议》规定，除《外商投资产业指导目录》中有中方控股（含相对控股）要求的鼓励类项目和限制类项目需核准外，其余投资项目与内地投资项目按同等权限和程序办理；公司设立及变更的合同、章程审批改为备案管理，备案后按内地有关规定办理相关手续。以下两种情形除外：（一）第四章第八条涉及保留的限制性措施及电信、文化领域公司、金融机构的设立及变更按现行外商投资法律法规以及相关法规办理；或（二）公司以外其他形式的商业存在的设立及变更按现行有关规定办理。

为了履行《协议》的上述约定，国务院颁布了《决定》，决定在广东省暂时调整有关法规、规章规定的行政审批和准入特别管理措施。《决定》特别提出，暂时调整《外商投资电信企业管理规定》、《中华人民共和国中外合作办学条例》、《中华人民

共和国国际海运条例》、《娱乐场所管理条例》、《征信业管理条例》、《国务院办公厅转发文化部等部门关于开展电子游戏经营场所专项治理意见的通知》（国办发[2000]44号）、《外商投资民用航空业规定》有关行政审批以及有关资质要求、股比限制、经营范围限制等准入特别管理措施的规定。香港、澳门服务提供者在广东省范围内从事相关业务的管理办法由国务院相关主管部门以及广东省政府另行制定。

同时值得注意的是，对于教育服务，允许香港、澳门服务提供者在广东省前海、南沙、横琴试点独资举办非学历中等职业技能培训机构，招生对象比照内地职业技能培训机构执行。

（三） 关注要点

《决定》颁布后，国务院相关主管部门以及广东省地方相关政府部门能否及时制定相关的管理办法落实《决定》，将影响能否尽早实现《协议》的宗旨。日后，能否在全国范围内推广广东省实现服务贸易自由化的经验同样值得关注。

二、 银监会修订《外资银行管理条例实施细则》

为了配合 2014 年修订的《中华人民共和国外资银行管理条例》（以下简称“《**外资银行管理条例**》”）的实施，银监会对《外资银行管理条例实施细则》进行了修订，并于 2015 年 3 月 12 日向社会公开征求意见¹。

（一） 背景

2014 年，国务院修订了《外资银行管理条例》，修订内容包括：取消设立营业性机构前需设立代表处的要求；放宽营业性机构申请经营人民币业务的条件，将开业年限 3 年以上改为 1 年以上，取消申

请前 2 年连续盈利的要求；取消外资法人银行拨付境内分行营运资金的最低金额要求。同年，银监会也据此制定了《中国银监会外资银行行政许可事项实施办法》。

为了与《外资银行管理条例》、《中国银监会外资银行行政许可事项实施办法》的内容相配套，也为了完善部分条款的表述，银监会对《外资银行管理条例实施细则》进行了修订²。

（二） 法律点评

《外资银行管理条例实施细则》共修订了 58 个条款，其中：与《外资银行管理条例》修订相配套的内容共 3 个条款；与《中国银监会外资银行行政许可事项实施办法》相关的修订内容共 42 个条款；进一步完善文字表述的修订内容共 13 个条款。

《外资银行管理条例实施细则》原有 134 条，修订后减少至 100 条。删除的条款主要是与《中国银监会外资银行行政许可事项实施办法》完全重复的程序性内容。其中值得关注的内容包括：

在市场准入方面，新增三种不得作为拟设外商独资银行、中外合资银行的股东的情形，具体包括：现金流量波动受经济环境影响较大；资产负债率、财务杠杆率高于行业平均水平；代他人持有外商独资银行、中外合资银行股权。

在经营方面，修改外资银行营业性机构临时停业的规定；新增外资银行营业性机构申请经营人民币业务或者扩大人民币业务服务对象范围所需提交的申请文件等。

（三） 关注要点

对于“现金流量波动受经济环境影响较大”、“资产负债率、财务杠杆率高于行业平均水平”的

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<http://www.cbrc.gov.cn/chinese/home/docView/56731B78C84D438C99F59ABB1E96297F.html>

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<http://www.cbrc.gov.cn/chinese/home/docView/81C4CFCBC0924A4397331ECAE1361125.html>

具体判断标准，还需要银监会进一步明确。否则，将有可能对外资准入产生负面影响。

三、 商务部进一步促进外商投资租赁业发展

为进一步促进外商投资租赁业发展，商务部对《外商投资租赁业管理办法》制定了补充规定草案，并于 2015 年 3 月 24 日向社会公开征求意见³。

（一） 背景

2013 年，国务院决定在中国（上海）自由贸易试验区（以下简称“上海自贸区”）开放金融服务业领域。经过近两年的营运，上海自贸区在金融服务业等领域形成了可复制、可推广的经验。国务院决定在全国范围内推广该等可复制改革试点经验，其中包括要求商务部于 2015 年 6 月 30 日前允许融资租赁公司兼营与主营业务有关的商业保理业务、融资租赁公司设立子公司不设最低注册资本限制等。在此背景下，同时考虑《协议》，商务部起草了补充规定，拟对《外商投资租赁业管理办法》作出补充。

（二） 法律点评

补充规定对《外商投资租赁业管理办法》作出

了多处修订，其中值得关注的要点包括：

在市场准入方面，删除外商投资融资租赁公司的注册资本不低于 1000 万美元的限制；外商投资融资租赁公司设立子公司不设最低注册资本限制；但是，新增了外商投资融资租赁公司的主要投资者（第一大股东或实际控制方）应具备金融背景、专业厂商背景或投行、私募基金等投资机构背景或具备融资租赁从业经验，资信良好，并从事实质性经营活动等要求。

在审批方面，下放外商投资租赁业的审批权限，将审批管理部门由商务部下放至省级商务主管部门，并将审批设立外资租赁公司和外资融资租赁公司的期限由 45 个工作日缩短至 20 个工作日；香港、澳门服务提供者在广东省投资设立租赁公司，公司设立及变更的合同、章程审批改为备案管理等。

在投资形式及经营范围方面，提高租赁财产附带的软件、技术等无形资产价值的价值上限，由不得超过租赁财产价值的二分之一提高至三分之二；允许外商投资融资租赁公司兼营与融资租赁主营业务相关的商业保理业务等。

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<http://www.chinalaw.gov.cn/article/xwzx/tpxw/201503/20150300398768.shtml>

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This bulletin covers the following important developments. The State Council further liberalized the services industry for service providers of the Hong Kong Special Administrative Region (“**Hong Kong**”) and Macao Special Administrative Region (“**Macao**”). The China Banking Regulatory Commission (“**CBRC**”) revised the *Implementing Rules of the Administrative Regulations of the People’s Republic of China on Foreign-invested Banks* (“**Implementing Rules**”). To further promote the foreign-invested lease industry, the Ministry of Commerce (“**MOFCOM**”) supplemented the *Measures on the Administration of the Foreign-invested Lease Industry*.

1. The State Council Further Liberalized the Service Industry for Hong Kong and Macao Service Providers in Guangdong Province

In order to adopt more preferential policies for Hong Kong and Macao service providers in Guangdong province and implement two agreements¹, on March 3, 2015, the State Council

promulgated the *Decision of the State Council on Temporarily Adjusting Relevant Administrative Examination and Approval Measures and Special Market Entry Management Measures Applicable to Hong Kong and Macao Service Providers in Guangdong Province* (“**Decision**”).

1.1 Background

In 2003, Mainland China entered into the *Closer Economic Partnership Arrangement* (“**CEPA**”) with Hong Kong and Macao respectively. By August 2013, to further strengthen the cooperation between Mainland China and, respectively, Hong Kong and Macao, Mainland China had entered into ten supplementary agreements to CEPA with each jurisdiction.

On December 18, 2014, in order to realize the liberalization of trade in services, Mainland China, Hong Kong and Macao resolved to enter into the Agreements. To implement such Agreements, the State Council promulgated the Decision and temporarily adjusted the administrative approval and the market entry measures for Hong Kong and Macao service providers in Guangdong Province.

¹ The agreements refer to the *Agreement between Mainland China and Hong Kong on Achieving the Basic Liberalization of Trade in Services in Guangdong Province under the Framework of Mainland China and Hong Kong Closer Economic Partnership Arrangement* and the *Agreement between Mainland China and Macao on Achieving the Basic Liberalization of Trade in Services in Guangdong Province under the Framework of the Mainland China and Macao Closer Economic Partnership Arrangement* (“**Agreements**”).

1.2 Legal Review

According to the Agreements, the approval authority will approve encouraged projects and restricted projects where the majority of shares (including controlling interests) must be held by Mainland Chinese investors under the *Catalogue for the Guidance of Foreign Investment Industries*. The remaining investment projects will be handled by the same authority and follow the same procedures as projects invested by Mainland Chinese investors. Further, the agreements and Articles of Association related to the establishment and alteration of the companies set up by Hong Kong and Macao service providers do not need to be approved. These agreements and Articles of Association only need to be filed with the approval authority, with the following two exceptions:

(1) reserved restrictive measures under Article 8 of Chapter IV and the establishment and alteration of a company or a financial institution in the telecommunications and cultural services sectors shall be handled in accordance with the existing foreign investment laws and regulations and other relevant provisions; and

(2) the establishment and alteration of commercial presence in forms other than companies shall be handled in accordance with the relevant existing provisions.

To implement the Agreements, the State Council promulgated the Decision and temporarily adjusted the administrative approval and the market entry measures in Guangdong Province.

The Decision temporarily adjusts the relevant administrative approval and market entry measures (e.g., relating to qualification, restrictions on shareholding percentages and business scope), which are stipulated under a number of administrative regulations and documents². The relevant competent department of the State Council and the People's Government of Guangdong Province will formulate the regulations with respect to the services provided by Hong Kong and Macao service providers in Guangdong province.

It is notable that, for education services, Hong Kong and Macao service providers are allowed to establish wholly foreign-owned non-academic vocational training institutions in Qianhai, Nansha, Hengqin of Guangdong province, and enroll students as the local vocational training institutions.

1.3 Next Step

The realization of the Agreements depends on whether the relevant departments of the State Council and government departments in Guangdong province will timely formulate the corresponding regulations to implement the Decision. It is also important to pay attention to when the liberalization of trade in services in Guangdong will be spread nationwide.

² Such administrative regulations and documents consist of the *Administrative Provisions on Foreign-invested Telecommunications Enterprises*, the *Regulations of the People's Republic of China on Sino-foreign Cooperation in Running Schools*, the *International Maritime Regulations of the People's Republic of China*, the *Regulations on the Administration of Entertainment Venues*, the *Regulations on the Administration of the Credit Investigation Industry*, the *Notice of the General Office of the State Council on Forwarding the Opinions of the Ministry of Culture and Other Relevant Departments on Launching Special Campaigns against Electronic Games Business Venues* (Guo Ban Fa [2000] No. 44) and the *Provisions on Foreign Investment in the Civil Aviation Industry*.

2. CBRC Revised the Implementing Rules

To comply with the *Administrative Regulations of the People's Republic of China on Foreign-invested Banks (2014 Revision)* (**"Foreign-invested Banks Regulations"**), CBRC revised the Implementing Rules and solicited public comments on March 12, 2015.³

2.1 Background

In 2014, the State Council revised the Foreign-invested Banks Regulations, the amendments included: (1) removal of the requirement to establish a domestic representative office prior to establishing a business institution; (2) easing of the restriction on conducting Renminbi business by business institutions: (i) shortening of the business operation term from more than 3 years to more than 1 year; (ii) removal of the requirement to realize profit for two consecutive years before filing an application; and (3) removal of the limitation on the minimum working capital that the head office should grant to domestic branches. In the same year, CBRC formulated the *Implementing Measures on the Administrative Licensing of Foreign-invested Banks* accordingly.

Aiming to comply with the Foreign-invested Banks Regulations and the *Implementing Measures on the Administrative Licensing of Foreign-invested Banks*, and to perfect the text of certain provisions, CBRC revised the

Implementing Rules.⁴

2.2 Legal Review

CBRC revised 58 provisions of the Implementing Rules, among which, 3 provisions were revised in accordance with the Foreign-invested Banks Regulations; 42 provisions were revised in accordance with the *Implementing Measures on the Administrative Licensing of Foreign-invested Banks*; the text of 13 provisions was perfected. The number of the provisions of Implementing Rules was reduced from 134 to 100. CBRC deleted the provisions that were duplicated in the *Implementing Measures on the Administrative Licensing of Foreign-invested Banks*. The notable amendments include the following:

In terms of market entry, CBRC inserted into the Implementing Rules, three circumstances under which companies cannot be shareholders of wholly foreign-invested banks or Sino-foreign joint venture banks: (1) cash flow volatility is significantly influenced by the economic environment; (2) the debt-to-asset ratio and the financial leverage ratio are higher than industry averages; and (3) the company holds for other parties any shares of wholly foreign-invested banks or Sino-foreign joint venture banks.

In terms of business, among other amendments, CBRC revised the provisions relating to the temporary business cessation of business institutions and inserted a list of application documents for business institutions to apply to provide Renminbi services or expand the

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<http://www.cbrc.gov.cn/chinese/home/docView/56731B78C84D438C99F59ABB1E96297F.html>

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<http://www.cbrc.gov.cn/chinese/home/docView/81C4CFCBC0924A4397331ECAE1361125.html>

customer scope of Renminbi services.

2.3 Next Step

CBRC needs to further interpret how to identify situations where “cash flow volatility is significantly influenced by the economic environment” and “the debt-to-asset ratio and the financial leverage ratio are higher than industry averages”. Otherwise, such criteria will probably hinder foreign investment.

3. MOFCOM Further Promotes the Foreign-invested Lease Industry

To further promote the foreign-invested lease industry, MOFCOM supplemented the *Measures on the Administration of the Foreign-invested Lease Industry*, and solicited public comments on the draft Supplementary Rules on March 24, 2015.⁵

3.1 Background

In 2013, the State Council decided to liberalize the financial services sector in the Shanghai Free Trade Zone. After almost two years of pilot reforms, the Shanghai Free Trade Zone has accumulated certain replicable experiences in the financial services sector and other sectors. The State Council decided to promote nationwide these replicable experiences. For example, the State Council asked MOFCOM to implement the following changes before June 30, 2015: (1) to allow financing lease companies to engage in the commercial factoring business that related to the companies' primary business and (2) to remove

the restrictions on the minimum registered capital of subsidiaries established by financing lease companies. In these circumstances, and taking the Agreements into consideration, MOFCOM drafted the Supplementary Rules to supplement the *Measures on the Administration of the Foreign-invested Lease Industry*.

3.2 Legal Review

The Supplementary Rules amend the Measures on the Administration of the Foreign-invested Lease Industry. The notable amendments include the following.

In terms of market entry, MOFCOM removed the requirement that the registered capital of a foreign-invested financing lease company be not less than USD 10 million. MOFCOM also removed the restrictions on the minimum registered capital of the subsidiaries established by financing lease companies. In addition, MOFCOM inserted new requirements for the primary investor (the largest shareholder or the actual controller), including: (1) the background of the primary investor must be related to finance, manufacturing, investment banks, private equity and other institutions or the primary investor must have experience in financial leasing, (2) the primary investor must be credible, and (3) the primary investor must engaged in actual operations.

In terms of approval, the approval and management authority for the foreign-invested lease industry has been decentralized from the MOFCOM to the provincial level and the period for approving a foreign-invested lease company

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<http://www.chinalaw.gov.cn/article/xwzx/tpxw/201503/20150300398768.shtml>

and a foreign-invested financing lease company has been shortened from 45 working days to 20 working days. For lease companies set up by Hong Kong and Macao service providers, the agreements and Articles of Association related to the establishment and alteration of these companies do not need to be approved. These agreements and Articles of Association only need to be filed with the approval authority.

In terms of investment and business scope, MOFCOM raised the threshold of intangible assets (e.g., software and technology attached to the leased properties) from no more than one half to two-thirds of all leased assets. Also, MOFCOM allowed the financing lease companies to engage in the commercial factoring business that related to the primary business of the companies.

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