
NDRC's Briefing Meeting on Increased Openness to Foreign Investment

MARCH 14, 2017

The [US-China Business Council \(USCBC\)](#) hosted a meeting on March 13, 2017, with the Foreign Investment Department of the National Development and Reform Commission (NDRC). Deputy Director General LIU Hongkuan (Mr. Liu) and senior officer GUO Rui (Ms. Guo) briefed USCBC members on the [Notice on Several Measures on Increasing Openness to Foreign Investment and Active Use of Foreign Investment](#) (Guo Fa [2017] No. 5) published by the State Council on January 17, 2017 (State Council Measures; for our recent client alert on the State Council Measures, please click [here](#)), and recent draft revision to the Catalogue for the Guidance of Foreign Investment Industry (the Catalogue). They stated that NDRC has coordinated with relevant departments to strengthen supervision to ensure implementation of the State Council Measures.

1. Increased openness to foreign investment

The State Council Measures are intended to expand China's openness to foreign investment into China. It consists of 20 measures divided into three sequential stages, i.e., market entry requirements, fair competition between foreign-invested and domestically invested companies, and preferential policies offered by local governments to attract foreign investment.

Mr. Liu stressed that the Chinese government intended to advance its opening-up policy through the revised [Catalogue](#), *inter alia*, the number of industry sectors in which foreign investment is restricted or prohibited has been reduced to 62 items from 93 items under the current Catalogue (amended 2015). In particular, 35 restricted items and 27 prohibited items are included on the "negative list" by reference to the negative list first piloted in the Shanghai Free Trade Zone in September 2013, although the latter offers more liberal market entry requirements, RMB conversion and capital remittance, taxation, and administrative procedures. Mr. Liu stated that public comments solicited for the draft revision of the Catalogue have been reviewed by regulatory authorities, and it is anticipated that the new edition of the Catalogue will be published in the first half of this year.

This is consistent with President Xi Jinping's remarks at a panel discussion on March 5, 2017, with deputies to the 12th National People's Congress (NPC) from Shanghai Municipality at the annual session of the NPC in Beijing, where he stated that China will stick to its all-round opening-up policy, and continue to liberalize and facilitate trade and investment.

Mr. Liu also stated that foreign investment is encouraged in infrastructure construction in energy, transportation and environmental protection through public-private partnerships.

2. Strengthening fair competition between foreign-invested and domestically invested companies

The Chinese government called for creating a market environment of fair competition between foreign-invested and domestically invested companies, which requires relevant government departments to examine the business licenses and qualification applications of foreign-invested enterprises subject to the same standards and processing timetable applicable to domestically invested companies. Mr. Liu stated that a third-party consulting firm had been engaged to ensure that the State Council Measures met the goal of fair competition.

Ms. Guo further added that NDRC will shortly introduce the National Investment Project Online Approval and Supervision Platform. It is an online platform through which relevant PRC authorities will carry out approval and/or record filing for fixed assets investment projects (regardless of whether by foreign-invested or domestically invested companies) in China, including operating license issuance and other approval/recordation procedures, environmental protection assessments, construction inspection and acceptance, etc. It will link central, provincial, municipal and county-level authorities but will be supervised by the State Council. One unique code will be generated for each investment project and all related information can thereby be tracked. The online platform will further streamline government administration.

Mr. Liu stated that China is committed to providing “national treatment” for all foreign investors (although he added that no country in the world could realize complete “national treatment” in reality).

3. Formulating preferential policies offered by local governments

The State Council Measures allow local governments to adopt preferential policies to attract more foreign investment to support local employment, economic growth and technological innovation. Mr. Liu confirmed that the State Council Measures replaced the [Notice of the State Council on Screening and Regulating Preferential Policies in Taxation and Other Aspects](#) (effective November 2014), which barred local governments from adopting fiscal policy to provide preferential treatment to companies unless such policies were approved by the State Council.

Mr. Liu emphasized that such flexibility must be bounded by local government's statutory authority. Citing taxation as an example, Mr. Liu stated that the central government retains authority over formulation, adoption and implementation of tax policy.

In response to inquiries from members of different industry sectors, Mr. Liu responded that NDRC will transmit those inquiries to relevant departments so that the PRC authorities can take those concerns into consideration when formulating sector-specific industry policies.

The State Council Measures set out the main frame of reforms that China will roll out to attract foreign investment, and designate relevant departments to take charge of formulating detailed

implementation rules. However, the Measures do not specify the extent or time frame for liberalization. Many reforms will likely be gradual, as they are part of a long-term effort to overhaul China's foreign investment rules in such sectors as automobile manufacturing and insurance. While the issuance of the draft revision to the Catalogue and State Council Measures marks progress, foreign investors are likely to expect more rapid and more extensive reform to create a more open and level playing field at a time when the Chinese government is also attaching greater weight to national security and social stability.

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