ASIALLIANS

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1. More supervision to come for capital markets

China's State Council Issued Several Opinions on Strengthening Supervision and Preventing Risks to Promote High-Quality Development of Capital Markets recently (hereafter referred to as "The Opinions"). This is the third time in the capital market history that China's State Council has issued a programmatic document on the capital market. From the historical experience of the release of "The Nine Opinions" in 2004 and 2014, the release and implementation of each document have an important role in leading and promoting the development of the capital market.

The recent policy outline is designed to enhance the entire domestic capital market governance process, encompassing the stages of listing, delisting, legislation, regulation, and accountability.

The overall objectives are:

- In the next five years, the framework for high-quality development of the capital market will be basically formed. The institutional mechanism for investor protection will be improved.
- By 2035, a highly adaptable, competitive and inclusive capital market will be basically established, and the legitimate rights and interests of investors will be effectively protected. The regulatory system and mechanism of the capital market will be comprehensive.
- By the middle of this century, the modernization level of the capital market governance system and capacity will be further improved, and a high-quality capital market matching the strong financial countries will be built.

Compliance requirements

The Opinions enumerate the illicit activities prevalent in the capital markets such as financial fraud and market manipulation to avoid delisting, misappropriation of private fund funds and breach of trust in the use of entrusted assets and illustrate the focus of the forthcoming regulatory period. In addition, the Opinions stipulate that companies will face more serious criminal compliance requirements, particularly in relation to insider trading, disclosure violations, and illegal operations in the securities and futures markets. Companies may take into account the avoidance of the abovementioned illegal behaviors.

In conjunction with the release of "The New Nine Opinions," CSRC will issue a series of capital market regulations in order to significantly increase the cost of violating the law.

CSRC's CSRC also issued the Legislative work plan for 2024 which includes 14 regulatory projects among which 9 "key projects to be introduced within the year" and 5 "projects that need to be studied and introduced at the right time", The focus of the legislation is to strengthen the supervision of key areas of the capital market, maintain the stable and healthy development of the market, and effectively protect the legitimate rights and interests of small and medium-sized investors.

2. Four pilot areas to cancel restrictions on foreign investment in value-added telecommunications services

On April 10 2024, the Ministry of Industry and Information Technology (MIIT) announced the Circular on the Pilot Program for Expanding the Opening up of Value-Added Telecommunications Services to the Outside World (The "Circular").

Value-Added Telecommunications Services refer to services which utilize public network infrastructure to provide telecommunications and information services. Value-added telecommunications services are divided into two types: The first type is based on facilities and resources, including Internet data center services, content distribution network services, domestic Internet virtual private network services, and Internet access services. The second type is based on public application platforms, including online data processing and transaction processing services, domestic multi-party communication service services, storage and forwarding services, call center services, information service services, coding and protocol conversion services.

The Circular makes it clear that pilot projects will be carried out in Beijing Comprehensive Demonstration Zone for the Expansion and Opening Up of the Service Industry, Shanghai Pilot Free Trade Zone (Lingang New Area) and Hainan Free Trade Port, and Shenzhen Advance Demonstration Zone of Socialism with Chinese Characteristics to take the lead in reducing the ratio restrictions for foreign investment and equity. The related area includes: the Internet Data Centers (IDC), Content Distribution Networks (CDN), Internet Access Services (ISP), Online Data Processing and transaction processing, as well as information services in the information distribution platform and delivery services (Internet news and information, network publishing, network audiovisual, Internet cultural operations excepted), information protection and processing services.

Foreign investment in value-added telecommunications businesses is currently limited to 50 percent. According to the Circular, in the pilot area, foreign investment in value-added telecommunication business in the pilot open category can exceed 50% up to 100%, i.e., it can be wholly owned by foreign investors in Business e-commerce under online data processing and transaction processing category and in application store business under information service business. Pilot open category includes five businesses: IDC business, CDN business, ISP business, online data processing and transaction processing, information service business. IDC business, CDN business are open to foreign investment other than Hong Kong and Macao for the first time, and there are no restrictions on the proportion of foreign equity.

The IDC business does not belong to the telecommunication business that China has committed to open up through its accession to the WTO. Under the previous foreign investment access framework in the telecommunications sector, if a foreign investor intends to engage in Internet data center business (including Internet resource collaboration service business) in China, it can only do so through the CEPA (Closer Economic Partnership Arrangement) model (except for Hainan FTZ). Under this model, the foreign investor shall be a qualified investor from Hong Kong and Macao in accordance with the requirements of CEPA, and the proportion of shares held by qualified investors from Hong Kong and Macao shall not exceed 50%. In comparison to the previously limited scope of the Hainan Free Trade Port for IDC business, which was limited to the "free trade port throughout the region and international," the pilot opening policy aims to liberalize foreign capital for conducting IDC business without geographic restrictions. Under the pilot open policy, foreign investors are allowed to establish enterprises in the pilot area, where they can wholly own the companies and provide IDC services on their own.

Compliance requirements

Foreign-invested telecommunications enterprises that intend to carry out value-added telecommunications services opened in the pilot areas shall apply to the MIIT for the approval of the pilot telecommunications business operation in accordance with the relevant provisions, and comply with the relevant laws and regulations and the provisions of the pilot approval in the telecommunications business operation activities, accept and cooperate with the supervision and management of the telecommunications regulatory authorities and relevant competent authorities.

Conclusion

Similar to the previous exploration of liberalization of foreign access to value-added telecommunications in FTZs, the Circular and the Pilot Program have liberalized the equity restrictions for foreign investors but have not lowered the requirements for access to the industry. Foreign investment in value-added telecommunication services liberalized in the pilot areas is still subject to the general requirements for the establishment of foreign-invested telecommunication enterprises, including, but not limited to, the requirements for capital, premises, personnel, and investors.