GARRIGUES
Commentary

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PRC to launch Shanghai free trade pilot zone

Introduction

Following the passage of the Overall Plan for the China (Shanghai) Free Trade Pilot Zone (the "Plan") on July 3rd, 2013, the State Council, on August 22nd, 2013, formally approved the establishment of Shanghai Free Trade Pilot Zone (the "FTPZ") in the current Shanghai Integrated Bonded Zone, which covers

- The Waigaoqiao Bonded Zone;
- The Waigaoqiao Logistics Park;
- The Pudong Airport Integrated Bonded Zone; and
- The Yangshan Free Trade Port Area.

Acting as the test-bed for China's economic reform policies, the FTPZ is aimed to accelerate the transformation of government function, further open up the service and adapt to global economic and trade development. The framework of favorable regulatory initiatives to be created in the FTPZ can be basically pictured with current public information and press release, despite of the unavailability of access to the particulars of the Plan. The major initiatives involve (i) simplification of foreign investment administration, (ii) facilitation of trade, (iii) favorable tax policies and (iv) financial reform.

Simplification of foreign investment administration

The most tangible among the initiatives is the simplification of foreign investment administration, as evidenced by the decision made by the Standing Committee of the National People's Committee on August 30th, 2013, authorizing the State Council to resolve conflicts between the prevailing laws regarding Foreign Invested Enterprises' ("FIEs") approval and the projected reform in the FTPZ (the "Decision").

Currently, FIEs are subject to the Foreign Investment Industries Catalogue (the "Catalogue") when choosing the sectors to enter, and then further subject to several administrative approvals at the time of its establishment and subsequent significant changes. The Decision articulates replacement of administrative approvals by filing administration for FIEs for a three-year tentative period, which will effectively grant FIEs the national treatment as domestic entities and actually promote foreign investment in terms of procedure requirement. The filing administration will work with a so-called "negative list" approach, where the list will include the sectors prohibited to foreign investors. As long as the foreign investment falls outside of the "negative list", no administrative approvals will be required. Although such list still remains undisclosed, it is expected to contain less prohibited sectors than the Catalogue. Therefore, foreign investment will be further liberalized in the aspects of both market access and process.

Facilitation of trade

The FTPZ will further explore the function of the existing bonded zones, i.e. goods entered into the bonded zone are exempted from customs clearance until they are later shipped out of the bonded zones. The FTPZ will reserve such functions but also streamline and liberalize custom supervision, for example, goods shipped from overseas will not be required of customs recordals; the supervision method will be centralized, categorized and electronic. In addition, expected to be the international trading center, FTPZ will explore a trading platform for international commodities, establish global repair and maintenance operations, encourage transit shipment and container consolidation and offer international vessel registration.

Favorable tax policies

There are wide expectations of taxation reform and one of them is that a preferential enterprise income tax will be lowered from 25% to 15%. However, this rumor is recently denied by the authorities and the ultimate tax rate still remains unknown.

Other tax treatments are also under on-going discussion.

Financial reform

Financial reform will be the highlight of the FTPZ and may probably be the boldest so far in China, which may include:

- Removing foreign exchange controls over RMB capital accounts;
- Introducing RMB cross-border transfer;
- Liberalizing financial market interest rates;
- Reforming foreign exchange control regime (focused on foreign debt administration and foreign currency cash pooling management);
- Opening up to private capital and foreign capital: set-up of wholly foreign funded banks and Sino-foreign joint venture banks may be allowed;
- Allowing foreign enterprises to gradually participate in commodity futures transactions;
- Enabling FIEs to engage in overseas portfolio investment;

- Permitting offshore trading by qualified Chinese banks;
- Encouraging financial market product initiatives;
- Supporting RMB cross-border reinsurance business; and
- Promote the finance lease industry.

Conclusion

Various polices that are expected to liberalize the market access, investment procedure, custom supervision, taxation, capital flow etc. in the FTPZ should probably be taken into consideration when making business decisions of locales and business scope. Situation and relocation in FTPZ will make establishment and/or maintenance of business far more economic in terms of time and financial cost. On the other hand, investors can extensively explore the new business opportunities brought by the FTPZ to make their investment in China more flexible, by entering into new sectors or expanding current business scope.

We will keep monitoring the updates of the FTPZ and the release of relevant laws, regulations and implementation rules, and keep you posted.

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