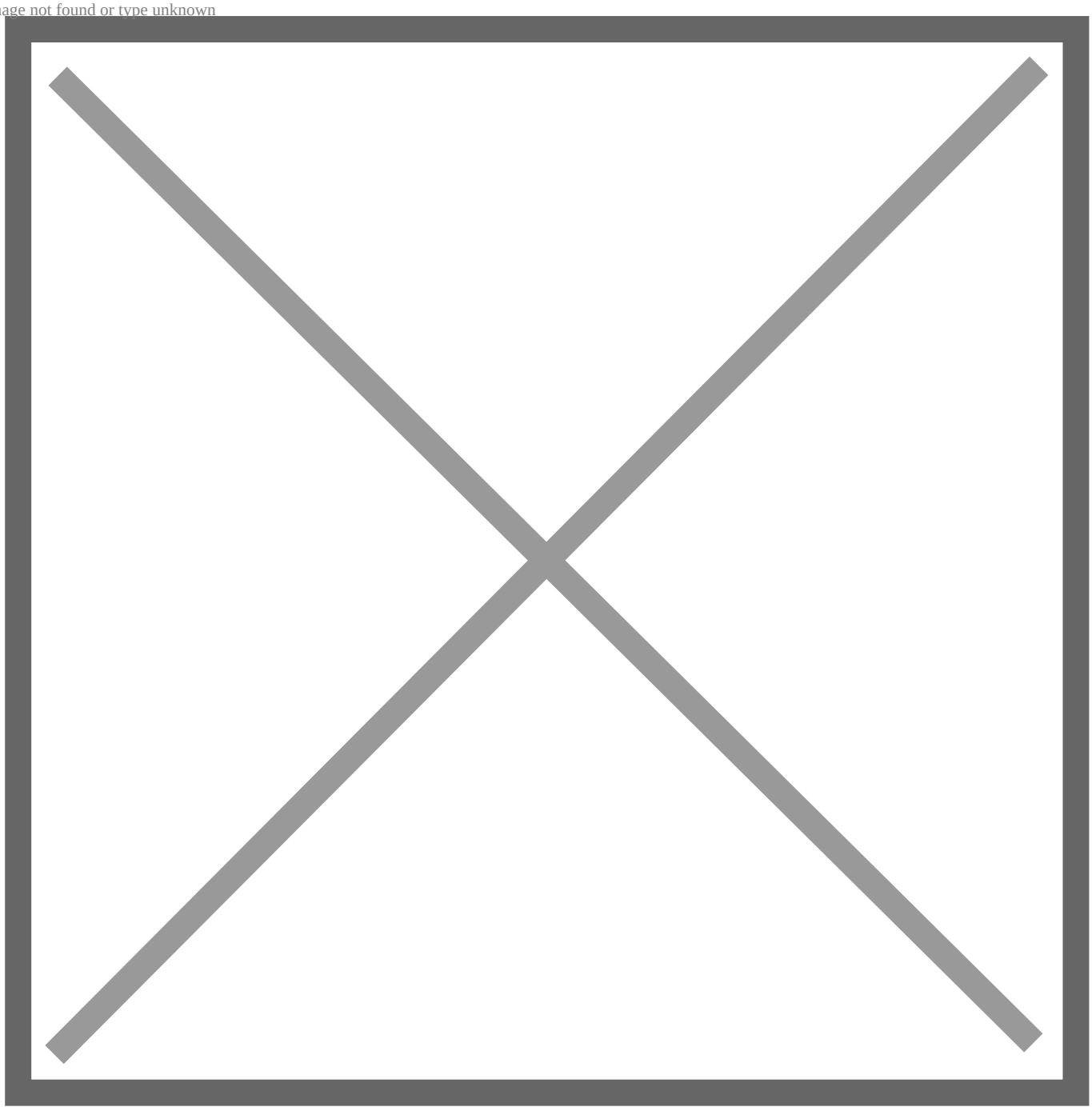
China's New Foreign Investment Guidance Catalogue (2015 Amendment)

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The Chinese government recently adopted an amendment to the Catalogue for the Guidance of Foreign Investment Industries (the Catalogue), which in many ways changes conditions and rules for foreign investment to China.

The Catalogue is a list of industrial sectors, subsectors and services that reflect the Chinese government's view on the relevant sectors' needs for foreign investment. It was published for the first time in 1995 and is considered a small bible of legal regulation of foreign investment in China. The previous amendment was made in 2011.

Encouraged, Permitted, Restricted and Prohibited Sectors

Economic sectors and activities in the Catalogue are divided into three categories –encouraged, restricted and prohibited. Industries not mentioned in the Catalogue are deemed permitted.

Differences among encouraged, permitted, restricted and prohibited, simply said, lie in the presence or absence of one or both of the following conditions: firstly, whether it is possible for that particular business activity to establish a 100% foreign owned enterprise (Wholly Foreign Owned Enterprise – WOFE) or whether there is a need to have a joint venture (JV) with a Chinese partner, and whether the Chinese partner must have a majority stake in the JV. Secondly, how many permits and special licences need to be obtained from the relevant authorising and supervisory bodies, as well as how supportive local authorities will be during set up and operation of the enterprise.

The amended Catalogue opens and releases many sectors, as explained in the following paragraphs. The restricted category originally consisting of 79 items, has been diminished by more than half.

Despite the overall liberalisation however, there are still significant limitations in certain sectors such as health and education. Some industries have been even moved from restricted to prohibited.

Manufacturing

It is evident that release occurs across the manufacturing sector, for example, production of manufacturing equipment and tools for routine and special productions, pharmaceutical products, beverages, and many others.

The exception is the automobile sector (manufacture of motor vehicles), which has been moved from permitted to restricted.

Liberalisation can be also seen in fact that the number of areas for which it was required to establish a JV in the past, and the number of activities where the Chinese party had to have a controlling stake in the JV, have been greatly reduced. In those areas establishing a WOFE is now allowed. Concrete examples include: the design and manufacture of transport equipment such as aircraft engines and parts, equipment for civilian aircraft and yachts, manufacture of electrical machinery and equipment such as equipment for transmission and transfer of electric energy and many others.

Real Estate Development and Finance Industry

A number of real estate development projects have been moved to the permitted category, including large amusement parks, cinemas, villas, and golf courses. From the restricted category some non-banking financial institutions have been removed, such as trust companies.

Healthcare and Higher Education

While many areas of the healthcare sector belong to the encouraged category, medical institutions were moved from permitted to restricted.

They can be now established and operated only as a so-called cooperative joint venture (in this case, the move to the restricted category was rather a confirmation of status quo since although under the previous catalogue health care facilities could be established as a WOFE, in practice there were not many such cases).

In addition, higher learning institutions and ordinary senior high schools are now allowed to be established only as a cooperative JV with the Chinese partner having a controlling stake.

Summary

This amendment is a clear sign of liberalisation in foreign investment in many sectors. However, what is equally important is how the supervising and local authorities will implement its provisions.

The amendment often uses the form “cooperative joint venture”, which is the second type of joint venture after an equity joint venture, the former JV being much less used. The cooperative JV allows for greater flexibility in agreements and arrangements between the JV partners, but there is no extensive experience either from the side of local administration, or from the side of the investors and Chinese partners.

Despite overall positive changes, foreign investors still have to spend time on preparation for entering the Chinese market. This means they should gather information on the market, legislation, administrative practices, including protection of know-how and other intellectual property rights, and carefully choose trustful business partners, and be ready for the long road ahead.

If you would like to understand how the changes in the 2015 Catalogue will affect your business in China, contact the EU SME Centre legal expert.