



Newsletter

Update

August 31, 2024

- **China Approves New Edition of Negative List for Foreign Investment Access and Supports High-quality Development of Innovative SMEs**
- **China to Step up Fiscal, Tax and Financial Policy Support for Large-Scale Equipment Renewal in Key Energy Sectors**
- **China Issues Document to Improve Market Access System**
- **MIIT Calls for Innovating Management of the Information and Communications Industry and Improving Business Environment**
- **Zhejiang Releases New Guidelines for Labor Dispatch Management**
- **Qianhai Releases New Edition of Guidelines for Defining Industries Eligible for Corporate Income Tax Incentives**
- **SAMR Issues Guide to Law Enforcement Regarding Internet Advertising Identifiability**
- **The Supreme People's Court Issued the Reply on the Validity of Clauses Requiring Third-Party Payment**

Article(s)

- **Introduction to The Regulation on Fair Competition Review**

Update

China Approves New Edition of Negative List for Foreign Investment Access and Supports High-quality Development of Innovative SMEs

On August 19, 2024, the executive meeting of the State Council reviewed and approved the *Special Administrative Measures for Foreign Investment Access (Negative List) (2024 Edition)* (the “Measures”) and discussed policy measures to support the high-quality development of small and medium enterprises that use specialized and sophisticated technologies to produce novel and unique products (Innovative SMEs).

The meeting pointed out the need to strengthen services trade liberalization and facilitation, implement negative lists for cross-border service trade across the board, and promote opening up of services sector through pilot comprehensive demonstration projects. It highlights the importance of relaxing restrictions

on foreign investment further by completely abolishing entry barriers in the manufacturing sector, while accelerating the opening up of sectors such as telecommunication, education and medical services. It also calls for improving the policies for foreign investment attraction by adapting to the new trends, unveiling more practical measures to improve business environment, and strengthening policy coordination in areas of taxation, finance, science and technology, industry and human resources.

China to Step up Fiscal, Tax and Financial Policy Support for Large-Scale Equipment Renewal in Key Energy Sectors

On August 21, 2024, the website of the National Development and Reform Commission (NDRC) reported that the General Office of the NDRC and the General Affairs Department of the National Energy Administration recently issued the *Action Plan for Large-Scale Equipment Renewal in Key Energy Sectors* (the “Action Plan”), outlining key tasks in seven areas and setting forth three safeguard measures.

The Action Plan calls for promoting the renewal and recycling of photovoltaic equipment to support the transformation of photovoltaic power stations, advancing the development of photovoltaic module recycling and reuse technology, and supporting the low-cost green dismantling of photovoltaic modules based on physical and chemical methods, as well as the research and development of high-value components, efficient environmental separation technologies, and complete sets of equipment. As for safeguard measures, it calls for intensifying fiscal, tax and financial policy support; and increasing financial support for equipment renewal and technological transformation in key energy sectors. It also stresses strengthening bank-enterprise connectivity, and guiding financial institutions to increase support for equipment renewal and technological transformation, make good use of re-loans, fiscal interest discounts and other support policies, and expand medium - and long-term loans to the manufacturing industry.

China Issues Document to Improve Market Access System

On August 21, 2024, the Central Committee of the Communist Party of China and the State Council released the *Guidelines on Improving the Market Access System* (the “Guidelines”), which clarify 10 points of content.

The Guidelines calls for improving the negative list management mode, and including market access management measures and temporary ones in a unified national market access negative list. The Guidelines said that illegal settings of access permissions beyond the list, illegal addition of access conditions, and arbitrary establishment of market access negative lists are strictly prohibited. The Guidelines instruct to scientifically set market access rules, remove all access barriers in sectors under full competition, and significantly reduce market access restrictions on business entities. The Guidelines also calls for the gradual removal of market access restrictions in the service sector, improving the market access environment in new forms of business and new sectors, and stepping up efforts to ease market access in more sectors on a pilot basis.

MIIT Calls for Innovating Management of the Information and Communications Industry and Improving Business Environment

On August 6, 2024, the Ministry of Industry and Information Technology (MIIT) released the *Guidelines on Innovating Management of the Information and Communications Industry and Improving Business Environment* (the “Guidelines”).

The Guidelines rolls out 12 key tasks in four aspects. The first is to further improve the access environment to make it more efficient, open and unified. The specific measures include allowing “one-off application and one-off approval” of the licenses for new technologies and applications involved in telecommunications, conducting self-inspection and self-certification for network access licensing of telecommunication equipment on a pilot basis in an orderly manner, comprehensively deepening the application of electronic licenses and certificates, and further carrying out the pilot work to expand the opening-up of value-added telecommunications services to the outside world. The second is to create a healthy, fair and orderly competition environment. The third is to build a well-regulated, transparent and predictable regulatory environment. The fourth is to create a convenient, reliable and high-quality service environment.

Zhejiang Releases New Guidelines for Labor Dispatch Management

On August 6, 2024, the website of the Zhejiang Provincial Department of Human Resources and Social Security issued the *Guidelines for Labor Dispatch Management in Zhejiang Province* (the “Guidelines”).

The Guidelines clarify the business license requirements, regulatory services, and legal rights protection of labor dispatch units, and emphasize that labor dispatch units must have a registered capital of more than 2 million yuan and be equipped with professional management personnel. At the same time, the guidelines require labor dispatch units to submit operating reports every year, and overdue or false reports will be punished. In addition, the guidelines also stipulate the responsibilities of labor dispatch units in work-related injury insurance, social security, etc., as well as cross-regional supervision and joint supervision mechanisms to ensure the healthy and orderly development of the labor dispatch industry.

Qianhai Releases New Edition of Guidelines for Defining Industries Eligible for Corporate Income Tax Incentives

On August 18, 2024, the Qianhai Authority of Shenzhen Municipality issued the *Service Guidelines of Qianhai for Defining Industries Eligible for Corporate Income Tax Incentives* (the “Guidelines”), which will come into effect on September 1, 2024 and remain valid until December 31, 2026.

The Guidelines specify the defining authorities, applicable objects, work procedures, credit facilitation, and other aspects. In line with the spirit of MOF & STA (2024) Document No.13 and MOF&STA (2021) Document No.30 and in accordance with the authorization from the Shenzhen Municipal Government, if the tax authorities have difficulty in determining whether the primary businesses of enterprises in the Qianhai Cooperation Zone fall within the Catalogue of Corporate Income Tax Incentives in the Qianhai Shenzhen-Hong Kong Modern Service Industry Cooperation Zone (2021 Edition), the Qianhai Authority

will be responsible for issuing an opinion, and relevant documents shall be prepared as required. In the form of an attachment, the Guidelines also released *Key Points and Documents List for Defining Industries Eligible for Corporate Income Tax Incentives in Qianhai*.

SAMR Issues Guide to Law Enforcement Regarding Internet Advertising Identifiability

On August 23, 2024, the State Administration for Market Regulation (SAMR) released the *Guide to Law Enforcement Regarding Internet Advertising Identifiability* (the “Guide”).

With a total of 16 articles, the Guide refines the subjects that are obligated to identify “advertising”, diversifies the methods for the identification of “advertising”, and allows advertisers to achieve advertising identifiability through voice prompts. The Guide for the first time clarifies the scenarios in which an Internet advertising publisher or a provider of Internet information service may identify Internet advertising in packages instead of identifying them one by one. The Guide specifies the circumstances under which the commercial feature of internet information is particularly remarkable, and it is not easy for consumers to confuse an advertisement with other information. It also stresses the specific situations under which administrative punishment may not be applied in law enforcement regarding internet advertising identifiability, and adopts guiding clauses to encourage advertisers to prompt the use of AI technologies, so as to facilitate the follow-up exploration and improvement of AI technologies, and promote the well-regulated AI development.

The Supreme People’s Court Issued the Reply on the Validity of Clauses Requiring Third-Party Payment

On August 27, 2024, the Supreme People’s Court officially issued the *Reply on the Validity of Clauses Agreed between Large Enterprises and Small and Medium-sized Enterprises to Use Third-Party Payments as a Precondition for Payment* (the “Reply”).

The Reply gives a negative evaluation on the validity of agreements between large enterprises and small and medium-sized enterprises to use third-party payment as a payment condition, and stipulates how to determine the payment period and breach of contract liability after the relevant clauses become invalid. It reflects a clear attitude of guaranteeing the fair participation of small and medium-sized enterprises in market competition and safeguarding the legitimate rights and interests of small and medium-sized enterprises in accordance with the law, and is of great significance for preventing and resolving financial risks and promoting the substantive resolution of contradictions and disputes.

Article(s)

Introduction to The Regulation on Fair Competition Review

by Sophie Chen

The Regulation on Fair Competition Review promulgated by the State Council on June 6, 2024, will take effect on August 1, 2024 (the “Regulation”). The Regulation aims to prevent situations that exclude or restrict competition from a preemptive, preventative perspective.

The Regulation represents the first administrative regulation that comprehensively and systematically stipulates the subjects, standards, mechanisms, and supervisory guarantees of fair competition review. Overall, this Regulation includes the following contents: the objectives, scope, and responsible departments for the fair competition review system; the four main review standards and exceptions for the fair competition review; the entities responsible for conducting reviews, the review process, and the establishment of cross-regional and cross-departmental working mechanisms; the random inspections, reporting, and supervision measures to ensure the implementation of the review system; the specific implementation measures for fair competition review that should be developed by the State Administration for Market Regulation (SAMR).

I. Scope for Fair Review

The Regulation establishes a comprehensive scope for fair review. This Regulation requires that when drafting laws, administrative regulations, local regulations, rules, normative documents, and specific policy measures related to the economic activities of operators, the drafting entities must assess whether such policies and measures exclude or restrict competition. The drafting entities refer to administrative authorities and organizations authorized by laws and regulations to manage public affairs. Economic activities include matters related to market access and exit, industrial development, investment promotion, bidding and tendering, government procurement, regulation of business conduct and qualification standards.

II. Review Standard System

This Regulation establishes a review standard system from the following four aspects: the laws, administrative regulations, local regulations, rules, normative documents, and specific policy measures related to the economic activities of operators should not contain content that restricts or indirectly restricts market access and exit; they should not contain content that restricts the free movement of goods and factors; without a legal or administrative regulation basis or without State Council approval, they should not contain content that affects production and operation costs; they should not contain content that affects business conduct. The heads of the Ministry of Justice and the SAMR also confirmed these fair review requirements in a press Q&A about the implementation of this Regulation.

(1) The standards for Market access and exit consist of prohibiting the review of businesses outside the negative list, franchise operations, restricted transactions, unreasonable/discriminatory conditions for access and exit, and safeguard clauses. This ensures that all operators, whether private enterprises or state-owned enterprises, enjoy the same rights to market access and exit, thereby reducing the risk for operators.

(2) The core of the standards for the free movement of goods and factors lies in eliminating regional market barriers, eliminating regional discriminatory treatment and local protectionism, and ensuring the free circulation of goods and services nationwide. This provision explicitly prohibits discriminatory treatment in situations such as government procurement, qualification standards, regulatory enforcement, fee items, and fee standards, while also protecting the right to free movement of operators by prohibiting

barriers that prevent local operators from relocating.

(3) The core of the standards for the impact on operating costs involves prohibiting the introduction of preferential policies for specific operators that lack a legal basis, to prevent certain operators from gaining undue advantages through such policies. These preferential policies include common tax incentives, financial rewards or subsidies, administrative fees, government funds, and social insurance fees. This provision also includes safeguard clauses to enhance its practicality.

(4) The key of the standards for the impact on production and business operations is to protect the autonomy of operators in setting their own prices and to eliminate any actions that exceed legal authority to establish government-guided prices or government-set pricing.

III. Secondary Review Mechanism

This Regulation establishes a secondary review mechanism for fair competition regarding significant policy measures. Policy measures issued by governments at the county level or above, or submitted for consideration by the congresses at the same level and their standing committees, are considered significant policy measures. The drafting entities are required to conduct a preliminary review of such significant policy measures, after which the significant policy measures and preliminary opinions shall be submitted to the local AMR for a secondary review.

Contact Us

davidzou@grandwaylaw.com

www.grandwaylaw.com

23F, S2 Building, Bund Financial Center, 600

Zhongshan No. 2 Road (E), Shanghai, 200010, China

© Grandway Law Offices. All Rights Reserved.