



## **Newsletter**

### **The Establishment the China (Shanghai) Free Trade Zone**

#### **I. Background**

On July 3<sup>rd</sup>, the executive meeting of the State Council made an initial approval of "The Comprehensive Program to Establish a Test Model for The Free Trade Zone of China (Shanghai)" and established the China (Shanghai) free trade test zone in Shanghai Waigaoqiao, Waigaoqiao Free Trade Logistics Park, Yangshan Free Trade Port and the Pudong Airport Comprehensive Free Trade Zone (FTZ) under special customs supervision. The FTZ would become the first free trade zone in the Chinese mainland.

On August 26<sup>th</sup>, China's top legislature discussed a draft proposal that will suspend some laws concerning the establishment and changing of foreign-invested enterprises operating in the Shanghai free trade zone. According to the draft, foreign funded enterprises will be allowed to engage in antique auctions and relevant articles in the Cultural Relics Protection Law might be suspended. Moreover, a negative list, explicitly showing areas and activities foreign investment may not be involved, will be adopted in management of the FTZ. In compliance with the negative list, there will be a deferment of three laws, including the Laws on Foreign-Capital Enterprises, Chinese-Foreign Equity Joint Ventures, Chinese-Foreign Contractual Joint Ventures, for foreign investment beyond the confines of the negative list. The draft suggested the NPC Standing Committee authorize the State Council to suspend the laws mentioned above, as well as similarly related laws for three years.

On August 30<sup>th</sup>, China's top legislature has authorized the State Council to suspend administrative approval for foreign-fund enterprises, Chinese-foreign equity joint ventures and Chinese-foreign contractual joint ventures in the planned free trade zone. The suspension will last for three years starting from October 1 2013.

#### **II. Analysis of Related Policies**

According to some reports, the program will eventually implement in five areas of open policy such as financial, trade and shipping area; and management, tax,



regulatory and other aspects of the package of five innovation. Detailed policies are as follows:

Financial Service Industry	Proposed changes: <ul style="list-style-type: none"><li>✓ Full convertibility of the Renminbi;</li><li>✓ Interest-rate liberalization;</li><li>✓ Exchange-rate liberalization;</li><li>✓ Availability of offshore financial services;</li><li>✓ Expansion and opening of the financial industry.</li></ul>
Trade Facilitation	Implementation of the new two-layer regulatory model: <ul style="list-style-type: none"><li>✓ The first layer shall be the gradual and complete opening of the border;</li><li>✓ The second layer shall be the safe, efficient control and free flow of goods in the zone.</li></ul> <p>The first layer will be implemented as foreign goods entering the FTZ and goods within the FTZ being transported abroad without being supervised by the customs. The supervision and management of the first layer focus on that of the people and the departments of the port to perform only necessary task such as inspection and quarantine work. This will be crucial as the customs will no longer use the batching regulation model, and will adopt the regulatory model with centralization, classification, and digitalization involved.</p> <p>The second layer will be implemented between the FTZ and the customs ports as the customs must impose certain tax on goods from the FTZs entering domestic areas other than the FTZs or from domestic areas other than the FTZs to the FTZs according to local customs law.</p> <p>The regulatory model will realize an efficient flow of people and goods, simplify procedures, lower cost and enable the goods to be still inside the country but outside the customs.</p>
Shipping	Building an international shipping center (coherent with previous policies) to:



Wang Jing & Co., Shanghai Commercial Group

	<ul style="list-style-type: none"><li>✓ Develop shipping service providers for ship trading, ship management, ship broking, shipping consultation and marine technology,</li><li>✓ Expand industry chain of shipping services</li><li>✓ Develop modern logistics and other related industries and;</li><li>✓ Consistently improve the quality of shipping services.</li></ul>
Preferential Taxation Policy	Foreign investors may pay income tax in installments and the income tax of some eligible business enterprises shall be levied at a reduced tax rate of 15%. Lower tax rates may be applied to offshore trading and financial industries.
Administrative Regulation	Enterprises in the area are entitled to: <ul style="list-style-type: none"><li>✓ Free trade</li><li>✓ Free of personnel entering and leaving</li><li>✓ Free of goods entering and leaving</li><li>✓ Free of currency circulation</li><li>✓ Free of goods storage</li></ul>
Others	Additional plans include: <ul style="list-style-type: none"><li>✓ Shopping: a departure tax rebate policy will be implemented and duty-free stores shall be set up in selected areas;</li><li>✓ Foreign banks and insurance companies will be allowed to directly set up wholly-owned subsidiaries or joint ventures with mainland partners in the zone;</li><li>✓ Foreign commodity exchanges such as the London Metal Exchange will be allowed to set up their own futures delivery warehouses;</li><li>✓ Permission will be given to foreign companies like Sony and Nintendo to sell gaming consoles in the zone as long as they are produced within the FTZ.</li><li>✓ Permission will be given to foreign companies to set up credit investment companies.</li><li>✓ Permission will be given to lease finance companies to set up subsidiaries without minimum registered capital restrictions</li></ul>



### III. Benefits

Obviously, establishment of the China (Shanghai) FTZ as the “first mover”, it could be the good news for Shanghai to set up shipping center, trade center and financial center. Further, Shanghai would have the chance to break the existing framework, slash the taxes and get other benefits which will bring advantages to foreign companies to run their business. As a result, there will be more and more financial institutions would register in Shanghai, and maritime insurance which as a solution to financial support to shipping center would become flourishing. Besides, the economy of Yangtze River Delta region would be driven by establishment of the China (Shanghai) FTZ. The last but not the least, the decline in China’s export volume has the opportunity to turn around.

### IV. Influence on the Legal Environment

Establishment of the China (Shanghai) FTZ would play an important role in the economic development of China as well as the construction of five special economic zones in the 1980’s, the development of Pudong in the 1990’s and China entering into WTO. Undoubtedly, it would bring tremendous economic growth potential to Shanghai.

Suspension of the Laws on Foreign-Capital Enterprises, Chinese-Foreign Equity Joint Ventures, Chinese-Foreign Contractual Joint Ventures and Protection of Cultural Relics will likely result in a type of chain reaction. It would seemingly cause a legal vacuum in certain areas and a series of new regulations would come into force soon.

We still do not know to what extent the innovation of trade, finance, shipping and tax can benefit domestic and foreign enterprises. In addition, a new obstacle arises in evaluating how to ensure all transactions are legal when enterprises take advantage of preferential treatment. Such an issue of legality will undoubtedly be a focus of future analysis.



Wang Jing & Co., Shanghai Commercial Group

Best regards,

Chen Xin

Partner

Wang Jing & Co., Shanghai

Rm. 2807-12, 28/F.

Bank of China Tower

200 Yincheng Road Central, Pudong

Shanghai 200120, P. R. China

Tel: +86 21 5887 8000

Fax: +86 21 5882 2460

Direct: +86 21 5888 7821

Mobile: +86 136 1192 6932

Website: [www.wjnco.com](http://www.wjnco.com)

*Best PRC Law Firm 2000*

*China Insurance Law Firm 2004,2007,2013*

*China Shipping Law Firm 2008,2010,2011,2013*

*ALB Finalist of China Litigation Law Firm 2011,2013*