

## **Industrial Policy and Foreign Investment Guidelines for the Maritime Industry of China**

### **中国产业政策与船运业外商在华投资指南**

Compared with many other industries, the maritime industry is among the least restricted in China under its foreign investment industrial policy. China literally opens its gate to foreign investment in all areas of the maritime industry. Sometimes, there may be surmountable odds, such as the requirement for mandatory form of joint venture with an appropriate Chinese party and shareholding percentage ceiling.

与其它产业相比，船运业可被列为中国外商投资产业政策下受限最少的产业之一。从法律法规的规定来看，中国对外国投资者开放船运业下的所有领域。尽管如此，中国对某些领域会有一些额外的要求，例如，必须以合资、合作企业模式进行投资以及外商持股比例限制等。

China has less restrictions and a huge market for foreign investors in the maritime industry. Its maritime code is of international standard and comprehensive. All these factors make China an ideal landscape for foreign investment in its maritime industry.

宽松的政策管制、中国的巨大市场与其在全世界范围内都颇为先进和全面的海商法，都为中国提供了船运业外商投资的理想环境。

### **Foreign Investment Industrial Guidance Catalogue**

#### **外商投资产业指导目录**

The foreign investment industrial policy of China is spelt out in the document jointly stipulated by the National Development and Reform Commission (“NDRC”) and the Ministry of Commerce (“MOC”). They are the two most important governmental authorities for foreign investment. This widely-referred document is the *Foreign Investment Industrial Guidance Catalogue* (“the Catalogue”).

中国的外商投资产业政策集中体现在一份由国家发展与改革委员会（“发改委”）和商务部（两个与外商投资相关的最重要的中国政府部门）联合颁布的文件中。这份在外商投资领域广为人知的文件即为《外商投资产业指导目录》（“目录”）。

From 1 December 2007, the new version of the catalogue (“2007 version”) replaced its previous 2004 version and there is direct impact on the media industry accordingly.

自2007年12月1日起，新版目录（“2007版”）取代了之前的2004版目录，这一改变对外商在传媒产业的投资产生了直接影响。

Industries are divided into three categories in the 2007 version, namely (1) encouraged category; (2) restricted category; and (3) prohibited category. Any industry not so classified is “permitted”. Foreign investments falling under the third

category are strictly prohibited.

在2007版目录中，所有产业被分为三大类：（1）鼓励类；（2）限制类；（3）禁止类。不属于前三类中任何一类的产业则属于“允许类”。外商被严格禁止进入第三类的相关产业。

For categories other than prohibited, different treatments are given to different investors under each category. For example, for a foreign investment falling under the encouraged or the permitted category, investment amount exceeding US\$100 million will make it subject to review and approval at the national level of commercial department rather than its local counterparts. As for the restricted category, only US\$50 million investment amount will trigger the central level review procedure.

对于除禁止类外的其它类别，根据外商投资所属的具体类别的不同，中国政府给予其不同的待遇。例如，对于属于鼓励类或允许类的外商投资，如果其投资总额超过1亿美元，则需要到国家级商务主管部门而非其省市级机关办理审批手续。而对于限制类下的外商投资，投资总额超过5000万美元就需到国家级商务部门办理审批手续。

### **Maritime Industry in the Catalogue**

#### 目录中的船运业

There is no sector in the maritime industry that is in the prohibited category. Any industrial prohibition of foreign investment in the maritime industry may only come from authority's disapproval but not at policy level.

在船运业下没有任何领域被列为禁止类。因此，对船运业外商投资的产业性禁止障碍只能来自于政府主管部门的审批而不会来自于政策层面。

In the Catalogue, the maritime industry does not constitute an independent industrial category but is integrated in the categories of construction industry, transportation industry and commercial industry.

在目录中，船运业并不构成一个独立的类别，而是散布于制造业、交通运输业及商业等类别下。

As for ship construction, China encourages foreign investment that may enhance its scientific and technological development. Therefore, (1) design of hi-tech ships and nautical equipment of high technological value; and (2) design and construction of sea-going fishing ships and yachts are within the encouraged category and only the "JV form" (see below) is required. In comparison, foreign investment with technologies widely available in China is less welcome. This may be the rationale for

placing repair, design and construction of ordinary ships<sup>1</sup> under the restricted category with additional foreign shareholding percentage ceiling requirement (“Chinese majority”).对于造船业而言，中国鼓励能够提升其科技水平的外商投资。因此，(1) 高新技术船舶及海洋工程装备的设计；及 (2) 远洋捕捞渔船、游艇的设计与制造属于鼓励类，且仅有“合资、合作”要求（详情见下文）。相较而言，对于仅含中国已经广泛掌握技术的外商投资，其受欢迎程度就不及前一类投资了。这也许能够解释为何普通船舶修理、设计与制造仅属于限制类，并且另有外商持股比例的限制（即“中方控股”要求）。

In addition, the following falls under the encouraged category:

- construction of petroleum exploitation, drilling and consolidated transport equipment;
- construction and operation of public dock equipment;
- regular and irregular international water transportation (Chinese majority);
- international container multimodal transport.

另外，以下领域的投资被列为鼓励类：

- 石油勘探、钻井、集输设备制造；
- 港口公用码头设施的建设、经营；
- 定期、不定期国际海上运输业务(中方控股)；
- 国际集装箱多式联运业务。

The following falls under the restricted category:

- setting up of water transportation companies (Chinese majority);
- setting up of shipping agencies (Chinese majority).

以下领域的投资被列为限制类：

- 设立水上运输公司(中方控股)；
- 设立船舶代理机构(中方控股)。

For salvage and towage businesses, as they do not appear in the Catalogue, they should be categorized as permitted.

海上救助及拖船等领域的外商投资并未出现在目录中，所以应属于允许类。

The “JV form” requires that only the structure of cooperative joint venture or equity joint venture structure is allowed, which means that foreign investors cannot establish

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<sup>1</sup> There is no interpretation in the Catalogue regarding definition of “ordinary ships”. In our general understanding, this term may be used in comparison with hi-tech ships and ocean-going ships with sophisticated equipment.

在目录中并无关于“普通船舶”这一概念的进一步相关解释。根据我们的一般理解，这一用语可能是相对于高新技术船舶以及远洋捕捞渔船等特种船舶而言的。

a wholly foreign-owned enterprise (commonly known as “WFOE”). They need to have at least one Chinese partner.

如有“合资、合作”要求，说明外国投资者必须与中方合作伙伴共同设立中外合资经营企业或中外合作经营企业，但不能设立外商独资企业。

For those with the remark of “Chinese majority”, not only the cooperative or equity joint venture structure is mandatory, the foreign party has to be the minority shareholder and leave the controlling stake to the Chinese side.

各条目如有“中方控股”标识的，则说明外国投资者可以与中方联合设立合作经营企业，也可以设立合资经营企业，但是无论何种企业形式，外方均不能控股。

### **Non-Industrial Restrictions**

#### **非产业性限制**

Besides industrial restrictions of foreign investment in the maritime industry discussed above, foreign investors may find constraints from other perspectives, i.e., restrictions imposed by relevant laws, regulations and administrative orders as well as those in review and approval procedures.

除上文介绍的产业性限制外，航运业的外商投资还可能受到其它方面的限制，这些限制来自相关法律、法规和行政规章以及政府部门的审批程序。

Coastal shipping and domestic towage business are strictly limited to vessels registered in China. There is one exception. Operation of such business by foreign-registered vessels may be allowed on a temporary basis. However, it may be approved only if no domestically registered vessels can satisfy special transport or towage demands. There is no specific law or regulation governing this issue presently. Therefore, we can only expect approval of temporary foreign operation under exceptional conditions.

中国港口间的运输及拖航业务被严格限制为只有中国籍船舶方可运营。唯一的例外是，外国籍船舶可能被批准临时经营中国港口间运输及拖航业务。然而，只有在确无中国籍船舶可满足运输或拖航需求的情况下，申请方能获得批准。另外，目前尚无关于这一问题的相关法律法规作为审批依据。因此，对外国籍船舶运营的临时批准可能仅在特殊情况下方可适用。

Operation of international water transport, that is, transport between a Chinese port and a foreign port and ancillary businesses including international ship agency, ship management and container storage is open to foreign investors. Besides normal establishing procedures, approval of the Ministry of Transport (“MOT”) is required.

外国投资者可以投资并经营国际船舶运输业务，即中国港口与外国港口间的水上运输业务，以及其它包括国际船舶代理、国际船舶管理、国际海运货物集装

箱仓储等在内的辅助业务。外国投资者如经营这些业务，除正常的审批程序，还需获得交通运输部的批准。

Besides complying with approval procedures of the NDRC and the MOC generally required in transactions of common industries, mergers and acquisitions of international shipping transport operators are also subjected to the MOT approval. However, the only legal basis of approval is contained in just one article, article 32 of the State Council *Regulation on International Water Transport*. There will be inevitable uncertainties.

除一般行业并购通常需要的发改委及商务部审批之外，国际船舶运输经营者的兼并、收购还需要经过交通运输部的批准。但是由于目前关于这一问题的唯一法律依据仅为国务院《国际海运条例》第三十二条，因此这一问题目前尚存在极大的不确定性。