

Procedures for Establishing a Business in the Mainland

26 February 2019

In recent years, the number and scale of foreign enterprises investing in the Mainland have doubled, and the fields of investment have continued to expand. According to the “Report on Foreign Investment in China” published by the Ministry of Commerce in 2018, 35,652 foreign investment enterprises (“FIEs”) were newly established in the Mainland in 2017, representing a 27.8% year-on-year growth, while the actual use of foreign capital reached USD 131.04 billion. As at the end of 2017, the total number of foreign-invested enterprises in the Mainland had almost reached 900,000, with approximately USD 1.9 trillion foreign capital being utilized. Over the 40 years of reform and opening up, the Mainland had continuously liberalized market entry for FIEs and expanded their industry coverage. Currently, the FIEs span over 20 industries, including processing trade-based manufacturing, wholesale and retail, construction, software and information technology, high technology, education, and finance.

Forms of Business Establishment in China

The main categories of business for Hong Kong foreign investors in the Mainland (especially in the service, trade, logistics and manufacturing industries) include the following: FIEs, individual sole proprietorship (“ISP”) and representative office (“RO”)¹.

Category
FIEs (including Hong Kong-Macao-Taiwan investment enterprises) <ul style="list-style-type: none">Wholly foreign-owned enterprise (“WFOE”)Sino-foreign equity joint venture (“EJV”)Sino-foreign cooperation joint venture (“CJV”)
ISP <ul style="list-style-type: none">According to the “Closer Economic Partnership Arrangement” (“CEPA”), Hong Kong permanent residents with Chinese nationality may, in line with relevant laws, regulations or administrative rules of the Mainland, establish an ISP in the Mainland without obtaining foreign investment approval. There is no limit on the number of employees, or the size of its business space. The permissible business scope of sole proprietorship of Hong Kong residents covers retail, restaurants, computer services, clinic, economic, trade and management consulting services, etc.
RO <ul style="list-style-type: none">ROs can engage in non-profit generating activities that are related to the business of its foreign parent enterprise and business-related liaison activities. ROs cannot operate businesses directly and they do not have legal person status.

Requirements on Registered Capital

The total investment of a FIE and its production scale is closely related. Investors should determine the amount of total investment in the Mainland according to the FIE’s respective industry characteristics and their expected investment scale. Depending on various amounts of total investment, the required debt-equity ratio ranges from 33% to 70%. When the total investment reaches a certain threshold (eg. USD 3 million), it would be subject to a minimum registered capital requirement at a certain amount or at a proportion of total investment, whichever the higher.

¹ Other categories include branches in Mainland of financial institution such as bank and insurance companies while equity investment fund companies usually set up joint venture in the Mainland to carry out activities.

Since 2014, the Mainland government has implemented a subscription and registration system for the registered capital of enterprises. Either the total paid-in capital by the company's shareholders or the company's total share capital (i.e. the registered capital) shall be registered with the industry and commerce administration authorities. Restrictions on the minimum registered capital of companies have been lifted, unless otherwise stated in provisions governing the minimum registered capital of specific industries stipulated in relevant laws and administrative rules. There is also no longer a specified time limit for capital contribution by company directors (promoters). Please refer to the websites of both the Central People's Government (http://www.gov.cn/zwgk/2014-02/18/content_2611545.htm) and the Ministry of Commerce (<http://www.mofcom.gov.cn/article/b/f/201406/20140600637866.shtml>) for details.

Policies of Admittance of Foreign Investments

Foreign investors should first determine whether the investment project is categorized as restricted, prohibited or encouraged. Encouraged investment shall also refer to relevant incentives policies.

There are three types of Negative List related to foreign investments in the Mainland, namely the "Negative List for Market Access" applicable to both domestic and foreign investors, the "Special Administrative Measures (Negative List) for the Access of Foreign Investment" targeting foreign investments, and the "Special Administrative Measures (Negative List) for the Access of Foreign Investment in Pilot Free Trade Zones" implemented specifically in the Free Trade Zones.

In principle, foreign investment projects in the fields beyond the Negative List are only subject to the record filing process and no approval is required.

The "Negative List for Market Access" with nationwide applicability was issued on 25 December 2018. Effective on 1 January 2018, the Negative List stipulated that both domestic- and foreign-invested enterprises shall apply for the access to the fields listed on the Negative List, which is subsequently subject to government authority's approval. Please refer to the website of the National Development and Reform Commission for more information: http://www.ndrc.gov.cn/gzdt/201812/t20181228_924070.html.

Reviewed and updated by the National Development and Reform Commission ("NDRC") and Ministry of Commerce ("MOFCOM") periodically, the latest version of the "Special Administrative Measures (Negative List) for the Access of Foreign Investment" was issued with effect from 28 July 2018. The fields fall under the restricted category of the Negative List are subject to the approval procedure for the admittance of foreign investment. The Negative List categorizes foreign investment projects as restricted and prohibited and please refer to the NDRC website for further information: <http://www.ndrc.gov.cn/zcfb/zcfbl/201806/W020180628640822720353.pdf>.

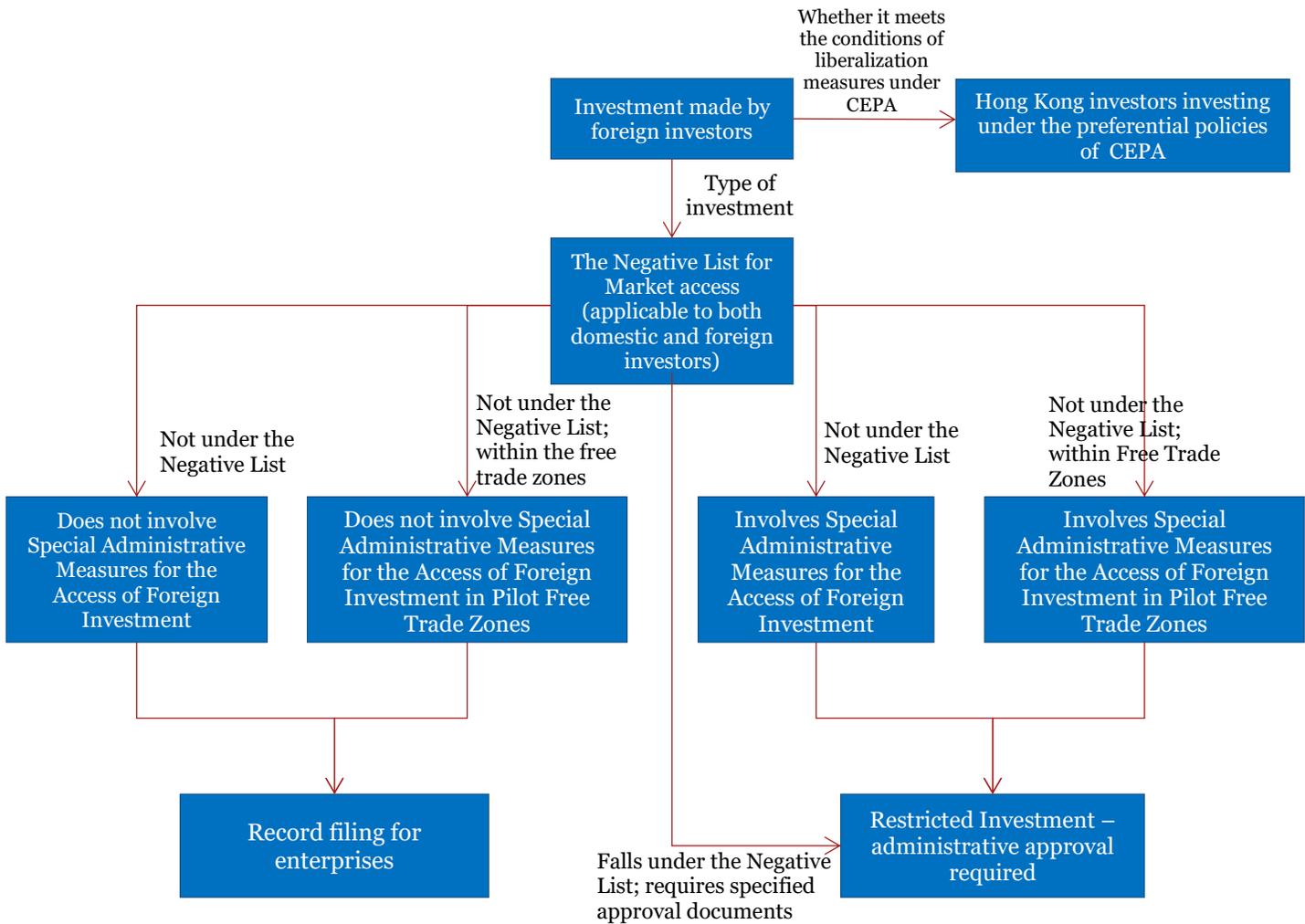
Except for the above two Negative Lists related to foreign investments, the Mainland has also introduced preferential policies specifically targeting Hong Kong investors in regard to the admittance of foreign investments, bring them more investment opportunities in the Mainland. If there are more favorable terms stated in the CEPA and its supplementary agreements, such relevant agreements and treaties shall apply. Please refer to the MOFCOM website for further information: http://tga.mofcom.gov.cn/article/zt_cepanew/.

In addition to the above Negative List executed at the national level and CEPA, different regions/cities in the Mainland often formulate and promulgate regional preferential policies for the admittance of foreign investments, particularly Free Trade Zones in special economic areas (eg. the Shenzhen Qianhai Shekou Area, Zhuhai Hengqin New Area, and Guangzhou Nansha New Area). These areas may refer to the "Special Administrative Measures (Negative List) for the Access of Foreign Investment in Pilot Free Trade Zones". If there are more favorable policies targeting qualified investors in the free trade zones, such relevant agreements and treaties shall apply. As of December 2018, China has established twelve pilot free trade zones including Guangdong Pilot Free Trade Zone. Given that free trade zones often have more preferential

investment treatments, Hong Kong investors are advised to understand these local policies thoroughly before investing to achieve a maximized return on investment. Please refer to the NDRC website for further information: <http://www.ndrc.gov.cn/zcfb/zcfbl/201806/W020180628649433532826.pdf>.

In conclusion, Hong Kong investors shall give priority to preferential policies on foreign investments under the CEPA after reasonable comparison with that of the Negative Lists. With rational use of different preferential policies in different cities/economic regions in the Mainland and optimized investment strategies, investors would realize a maximized return on investment.

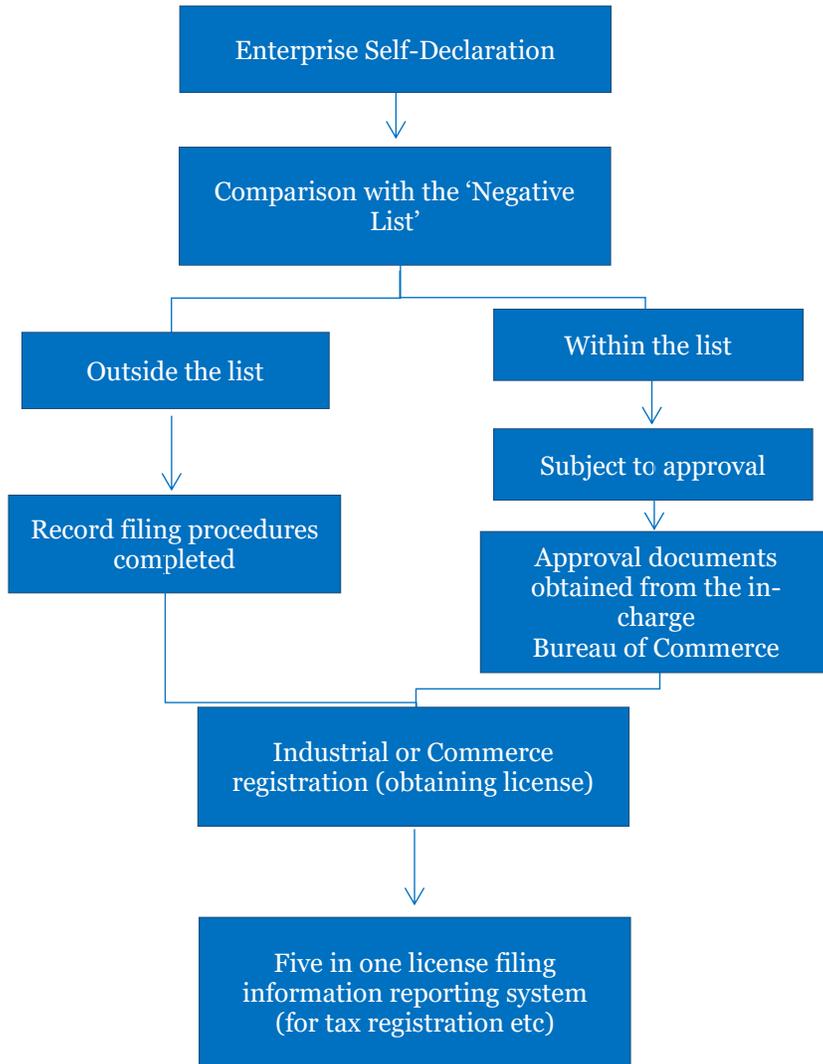
The specific policies on the admittance of foreign investments are as follows:



Setup procedures and foreign investment record filing

The establishment of FIEs mainly includes registration and record filing procedures with the Administration of Industry and Commerce and MOFCOM. The Mainland has officially implemented the “Five in one license, one code one license” policy to facilitate commercial activities from 1 October 2016. From 30 June 2018 onwards, the Mainland has also implemented the “Single-window service” policy, further simplifying registration and establishment procedures.

Below sets out an example of establishing FIEs in Guangdong province. The process basically comprises two steps: foreign capital record filing or approval, and business registration. The procedures may vary depending on whether the new FIE involves the implementation of special administrative measures for access as prescribed by the Mainland government. The simplified procedures are illustrated in the following diagram:



Note: Hong Kong service providers enjoying preferential benefits under CEPA must present the relevant record filing documents issued by the in-charge commerce bureau when handling company set-up, change of name or deregistration matters.

Industrial or commerce registration include the company name pre-approval application. After the industrial and commercial registration is successfully completed and the business license is obtained, Hong Kong investors should complete the subsequent procedures as soon as possible, including but not limited to the following: chop engraving, foreign exchange registration, bank account opening and customs registration at the Public Security Bureau, Administration of Foreign Exchange, bank and Customs respectively.

For more information on the above process, please visit the following websites:

1. Guiding Opinions of the Guangdong Province Administration for Industry and Commerce on Accomplishing Related Registration Work after the Implementation of Filing of Records for Foreign-invested Enterprises
http://zwgk.gd.gov.cn/00694001X/201806/t20180605_767883.html
2. Guangdong Province Administration for Industry and Commerce (Self-Declaration Enterprise Name and Electronic Registration System)
http://www.gdgs.gov.cn/gdgsj/wsbs/home_wsbs.shtml
3. Foreign Investment Enterprise Record Filing System of the Ministry of Commerce
<http://wzzxbs.mofcom.gov.cn/WebProBA/app/entp/approve>
4. Guangdong Province “Single-window service” system for enterprises
<http://qykb.gdzfwf.gov.cn/qcdzhdj/>
5. Guangdong Province “integrated certificate” filing information reporting system
<http://bsxt.gdbs.gov.cn/apprUnionApply/#/index>
6. Approval for FIE establishment (including contracts, articles of association)
<http://www.gdzfwf.gov.cn/portal/guide/11440000096927520N20118008003>
7. Record Filing Procedures for Investments Matters for Hong Kong or Macao Service Providers
<http://wzzxbs.mofcom.gov.cn/WebProBA/file/other/cepaOperate.htm>

If the scope of business of the FIEs require licensing (eg. catering, accommodation), the relevant approval documents from the relevant authorities should be obtained.

The information above regarding establishing FIEs only serves as a general advice and for reference purposes only. The information shall not be treated as legal advice or any other professional advice. For specific questions or practical implementation, please refer to the websites listed in Appendix I or contact qualified law firms or professional consulting institutions in the Mainland for providing handling FIE establishment matters on behalf of foreign investors. Such services may include drafting of the company’s articles of association, preparation of the application package for FIE establishment and negotiation with the relevant government authorities. Besides, FIEs shall also pay attention to labour, tax and intellectual property right issues. If any civil or commercial disputes arise, they should be resolved through legal procedures.

This report is based on the general interpretation and application of the relevant PRC tax rules as of the date of this report. As tax laws and regulations are subject to change at any time, and such changes may be retroactive in effect and may be applicable to this advice, no assurance can be given that such changes would not adversely affect our advice. We accept no responsibility to advise you of future legislative or administrative changes, on either a prospective or retrospective basis, after the date of this report.

Appendix I — Local Contacts for Information on Foreign Investment

Hong Kong investors may contact the government service hotline (86 – area code – 12345) and be transferred to the relevant local government bureaus or personnel depending their enquiries. They may also directly visit the following departmental websites for different regions for further enquiries.

City	Entity	Address	Website
The 9 Cities within the Guangdong-Hong Kong-Macao Greater Bay Area			
Guangzhou	Commerce Committee of Guangzhou Municipality	Guangzhou International Economic And Trade Building, No. 158, DongFeng West Road, Guangzhou	http://www.gzboftec.gov.cn/
	Guangzhou Foreign Investment Management Service Centre	Bldg. 3, No 1 Fuqian Road, Guangzhou, Guangdong	http://www.gz.gov.cn/gzgov/s2767/tzgz.shtml
Shenzhen	Shenzhen Municipal Commerce Bureau	12/F, Great China International Exchange Square, No 1, Fuhua Road 1, Futian, Shenzhen	http://www.szinvest.gov.cn/
	Shenzhen Foreign Economy & Trade Service Centre	6/F, LANDMARK Building, 4028 Jintian Road, Futian, Shenzhen	http://www.szfetsc.com.cn/Index.aspx
Zhuhai	Zhuhai Investment Service Centre	189 BaoXing Road, Xiangzhou District, Zhuhai, Guangdong Province	http://www.zhsswj.gov.cn/wsbs/bszn/wzglk/
Foshan	Bureau of Commerce of Foshan City	3/F, 135 FenJiangZhong Road, Chancheng District, Foshan	http://www.fscom.gov.cn/aksywcx/wstzglk/
Zhongshan	Foreign Investment Service Centre of Zhongshan	57 ZhongShanEr Road, Zhongshan, Guangdong Province	http://www.zsfs.com/#
Dongguan	Dongguan Foreign Investment Program Centre	7/F, 33 Guantai Road, Dongguan, Guangdong	http://invest.dg.gov.cn/publicfiles/business/htmlfiles/tzdg/index.htm
Huizhou	Bureau of Commerce of Huizhou Municipality	45 Nanmen Road, Huizhou	http://swj.huizhou.gov.cn/pages/cms/hzsswj/html/index.html
Jiangmen	Jiangmen Bureau of Commerce	10 BaiSha Road West, Lianjiang District, Jiangmen, Guangdong Province	http://swj.jiangmen.gov.cn/ywx/tzcj_21888/bszn_21889/
Zhaoqing	Bureau of Commerce of Zhaoqing city	8 XinAnSi Road, Duanzhou District, Guangdong Province	http://swj.zhaoqing.gov.cn/
Guangdong-Hong Kong-Macao Greater Bay Area Pilot Free Trade Zone			
Nansha	Office of the Guangzhou Nansha New Area	Counters No. 13-24, 1/F No. 1 Fenghuang Road, Nansha, Guangzhou Province	http://ftz.gzns.gov.cn/#jwfwpt
	Nansha Free Trade Zone Foreign Investment Enterprise “Single-window service” online system platform		http://14.23.171.21/nseas-web/outernet/yiKouShouLi.do
Qianhai	Authority of Qianhai Shenzhen-Hong Kong Modern Service Industry Cooperation Zone of Shenzhen	23 Qian Wan Yi Road, Nanshan District, Shenzhen	http://www.szqh.gov.cn/tzqh/
	Shenzhen Qianhai Foreign Investment Enterprise “Single-window service” online system platform		http://qhsk.sz.gov.cn/yksl/MainPage.aspx
Hengqin	Zhuhai Hengqin New Area Administrative Committee	41 Dezheng Street, Hengqin New Area, Zhuhai, Guangdong	http://www.hengqin.gov.cn
	Hengqin New District Online Commercial Registration Management Information Platform		http://qcdz.hengqin.gov.cn/

*** This report is prepared by the consultant engaged by the Constitutional and Mainland Affairs Bureau of the Hong Kong Special Administrative Region Government according to the general interpretation and application of the relevant rules and regulations issued as of the date of this report. This Bureau has not verified the accuracy of the contents of this report and does not accept any responsibility or legal liability for any loss arising from the contents of this report. As tax laws and regulations are subject to change at any time, and such changes may be retrospective in effect and may be applicable to this advice, no assurance can be given that such changes would not adversely affect this advice. This Bureau and the consultant will not update the report on the latest changes in the legal application or interpretation after the date of this report.
