

Alert | Technology, Media & Telecommunications



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China to Relax Foreign Ownership Restrictions in Telecom Sector

On April 10, the Ministry of Industry and Information Technology of China (MIIT) released the [Circular on Launching the Pilot Program for Expanding the Opening-up of Value-Added Telecommunications Services](#) (Circular). According to the Circular, subject to further implementing regulations, foreign investors will be permitted to set up wholly owned subsidiaries to carry out certain licensed telecom services in four pilot regions, including designated areas in Beijing, Shanghai, Shenzhen, and Hanan.

Chinese law maintains access restrictions against foreign investors' entry into certain service sectors utilizing telecom infrastructure and facilities. Such restrictions are imposed by subjecting the service provider to a value-added telecom service (VATS) license and requiring the VATS license applicant to be a China-domiciled corporation either wholly owned or with at least 50% interest owned by Chinese investors. Based on the MIIT service catalogue, such controlled telecom services encompass operating a third-party online marketplace ("online data and transaction processing services"), operating a data center or providing cloud services ("Internet data center" service or "internet resources collaboration service" (IRCS)), and providing online information services. The MIIT catalogue provides only broad and technical descriptions of each telecom services category, which, when read in the context of access restriction, allows expansive interpretation. For example, if an e-commerce and artificial intelligence (AI)-aided application enables users to generate and exchange contents through the provider's platform, such "content" element may subject the provider to the category of providing online information services, thus requiring a VATS license for which foreign providers are not eligible.

Over the past decade, China has progressively eased or lifted the ownership control thresholds for foreign investors in select telecom service categories, including to allow foreign investors to wholly own and operate a third-party online marketplace or a mobile-based application store, which the catalogue categorizes as a type of information service. Consistent with this trend, the Circular is kickstarting a pilot program under which, subject to the restrictions explained below and further implementing regulations, foreign investors will be allowed to wholly own businesses providing any of the five categories of services in said pilot regions.

Telecom Service Categories	Pilot Program (including restrictions)
<p>Internet Data Center Services (B11), including (1) internet data center service, which refers to provision through contracting or leasing of services including placement, maintenance, system configuration and management relating to users’ servers and other internet or network-related equipment, and leasing services of database systems, servers and other equipment, server space, communication line and egress bandwidth, and other application services, in each case utilizing related server rooms and facilities; and (2) internet resources collaboration service, which refers to provision of services such as data storage, application development environment, application deployment and operation management through the internet or other networks that can be accessed at any time, used on demand, are scalable, and are collaboratively shared by utilizing the equipment and resources in the data center.</p>	<p>Foreign investors will be allowed to wholly own a subsidiary in China and operate through the subsidiary the relaxed services in China provided the following conditions are satisfied:</p> <ol style="list-style-type: none"> (1) the subsidiary is incorporated in any of the above four pilot regions, (2) the service facilities (whether purchased or leased) are located in the same pilot region, (3) the provider may not purchase CDN acceleration service from outside the pilot region, (4) with respect to Internet Access Service (B14) only, its customers must be located within the pilot region, and (5) with respect to Information Service (B25), the permitted services must exclude online news service, online publication service, online audio and video broadcasting service, and other online culture activities (which include generating and distributing online audio, video, and gaming programs).
<p>Content Distribution Network Service (B12), which refers to the provision of distributed storage services, caching content, and distributing contents to fast and stable cache servers according to the traffic dynamic and loading conditions of the network in order to improve the accessibility to user contents and service availability by utilizing a traffic distribution management network platform formed by node server groups distributed in different areas.</p>	
<p>Internet Access Service (B14), which refers to the provision of internet access services to various users by utilizing access servers and corresponding software and hardware resources to establish service nodes and connecting such nodes with internet backbone through public communication infrastructure. Users may connect to the provider’s service nodes through public communication networks or other means and then connect to the internet through such service nodes.</p>	
<p>Online Data and Transaction Processing Services (B21), which refers to the provision of data processing and transaction/business processing services to users through any application platforms connected to public networks or the internet. The online data and transaction processing services include (1) online transaction processing services,</p>	

Telecom Service Categories	Pilot Program (including restrictions)
(2) electronic data interexchange services, and (3) online/electronic equipment data processing services.	
Two Subcategories of Information Services (B25) , including (1) information publishing and delivery service, i.e., establishment of an information platform to enable users to publish text, pictures, audio and video content, application software, and other information, and the platform providers can deliver and distribute text, pictures, audio and video content, application software, and other information to terminals, emails, etc. designed by users according to their needs; and (2) information protection and processing service, i.e., provision of services to users like endpoint virus scan and deletion, endpoint information, and content protection and processing, as well as spam information interception and do-not-disturb services by establishing a public service platform and operating client applications running on computers, smart terminals, etc.	

Once the implementation regulation of the pilot program is in place, foreign investors will be permitted to obtain the VATS license for their wholly owned subsidiaries and carry out currently controlled telecom services in China. That said, the Circular only authorizes local governments in the four pilot regions to promulgate their detailed implementing regulations, balancing the goal of attracting foreign investors and the priority to control security risks and submitting the implementing regulation for MIIT’s approval. Thus, practical details regarding how a foreign investor can obtain the VATS license for the telecom services and if any extra conditions will be attached are not yet available.

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