

From Market Access to Market Operation: China's 2026 Foreign Investment Action Plan and Its Implications

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前言

On 16 June 2026, the Ministry of Commerce (“**MOFCOM**”), the National Development and Reform Commission (“**NDRC**”), and the Ministry of Finance jointly issued the *Action Plan for Stabilizing and Enhancing Foreign Investment* (Shang Zi Fa [2026] No. 97) (the “**Action Plan**” or the “New Policy”). As the first comprehensive policy document on foreign investments issued in the inaugural year of China's 15th Five-Year Plan, the *Action Plan* is not only a timely response to the need to stabilize foreign investment amid current economic conditions, but also reflects a profound development in China's foreign investment regime: a shift away from a framework centered predominantly on market access toward a regime that places growing emphasis on full-spectrum market operational safeguards.

Building on successive foreign investment stabilization and opening-up policy packages rolled out over recent years, this *Action Plan* underscores the central government's enduring resolve to refine China's foreign investment ecosystem and anchor stable, long-term expectations for foreign investors. Compared with earlier policy documents, the *Action Plan* introduces several noteworthy institutional developments, including improvements to the regulatory framework governing foreign-invested M&A, support for the domestic listing of qualified foreign-invested enterprises (“**FIE(s)**”), measures to facilitate reinvestment in the PRC, enhanced support for foreign participation in the high-quality development of the pharmaceutical sector, and further optimization of the regulatory framework for cross-border data transfers. This article examines each of these key developments in turn.

I . From “Market Access” to “Market Operation”: The Evolution of China’s Foreign Investment Policy

To fully appreciate the significance of the *Action Plan*, it should be viewed against the broader evolution of China’s foreign investment regime over the past decade. From the 13th Five-Year Plan to the 15th Five-Year Plan, China’s regulatory framework for foreign investment has undergone a fundamental transformation, from initially focusing on **regulating market access** to increasingly aiming towards **facilitating market operation**. This policy evolution is clearly reflected in the changing priorities set out in successive Five-Year Plans.

1. From “Shortening the Negative List” to “Zero Restrictions in Manufacturing”: The Maturation of the Market Access Regime

The 13th Five-Year Plan, adopted in 2016, called for the enactment of a foundational law on foreign investment and the comprehensive implementation of a regime based on pre-establishment national treatment coupled with a negative list. The 13th Five-Year Plan (adopted 2016) mandated a fundamental foreign investment law and full rollout of the pre-establishment national treatment plus negative list system, constituting China’s top-level institutional blueprint for this foreign investment regulatory model. The framework was legally formalized in 2020 upon the entry into force of the Foreign Investment Law and its Implementing Regulations, which codified the dual system and laid the legal groundwork for China’s modern foreign investment governance regime.

Building on these reforms, the 14th Five-Year Plan, released in 2021, shifted the policy focus from trimming restricted sectors to enforcing post-establishment national treatment. It called for further cuts to the foreign investment negative list and underscored the principle of equal treatment for FIEs once market access has been granted.

Concrete progress followed shortly thereafter. Effective January 1, 2022, all manufacturing-related

restrictions were struck from the negative list for China's Pilot Free Trade Zones. The *Special Administrative Measures (Negative List) for Foreign Investment Access (2024 Edition)*, released in September 2024, scrapped the last two manufacturing-related restrictions in the nationwide list, erasing all foreign investment entry barriers in the manufacturing sector.

In view of these developments, the institutional framework governing market access for foreign investment may now be regarded as largely complete. As Vice Minister of MOFCOM, Mr. Ling Ji observed at the policy briefing in connection with the *Action Plan*, “*The issue of market access in the manufacturing sector has been fully resolved. The next priority is to address the issue of ‘market operation’ once market access has been granted.*” This statement succinctly captures the current stage of China's foreign investment policy: the focus is no longer whether foreign investors may enter the market, but whether, once admitted, they can operate efficiently, compete on equal terms, and expand their business on an equal footing.

2. From “Market Access” to “Market Operation”: Liberalization of the Services Sector as the Next Policy Priority

The 15th Five-Year Plan, released in 2026, expressly calls for “further comprehensive implementation of national treatment for foreign-invested enterprises, the repeal or amendment of laws and regulations inconsistent with the Foreign Investment Law, and effective implementation of both market access and market operation (准入又准营).” By elevating **market operation** to the same strategic importance as **market access**, the Plan provides the top-level policy foundation for the *Action Plan*.

Then what does **market operation** mean in practice? It means that after securing market entry, FIEs may access production factors on an equal footing, compete fairly, and complete routine operational approvals and filing free from undue obstacles. Most concerns voiced by foreign investors in recent years such as implicit discrimination in government procurement, protracted cross-border data transfer reviews, cumbersome foreign exchange procedures for reinvestment of profits, and slow approval for innovative pharmaceuticals are fundamentally, in essence, issues of **market operation** rather than **market access**.

Against this backdrop, the *Action Plan* identifies the liberalization of the services sector as the principal avenue for advancing the “market operation” agenda. At the policy briefing, Mr. Ling acknowledged that “the services sector is the principal area for China’s opening-up and attraction of foreign investment, accounting for approximately 70% of actual foreign investment utilized.” Prioritizing the services sector therefore reflects not only the changing composition of foreign investment in China, but also responds directly to the principal operational concerns of foreign-invested enterprises.

3 .From Pilot Programs to Institutional Reform: Solidifying Opening-Up with Proven Pilot Experience

A review of China’s policy developments over the past three years reveals a clear evolutionary trajectory: pilot rollouts, policy evaluation, and eventual institutionalization. Since 2024, MOFCOM, with other relevant authorities, launched the pilot opening-up programs in three key sectors: cloud computing (value-added telecommunications services), wholly foreign-owned hospitals, and biotechnology. To date, at least 166 foreign-invested enterprises have received pilot approvals to provide value-added telecommunications services, covering all ten categories of such services; eight wholly foreign-owned hospitals have been approved; in the biotechnology sector, at least eight enterprises in the Beijing and Shanghai Pilot Free Trade Zones have successfully expanded their approved business scope. Based on reviews of existing pilots, the *Action Plan* translates their successful practices into formal institutional rules. It phases in opening trials for vocational training bodies, colleges, and top-tier STEM, agriculture and medical universities, and directs regulators to fast-track applications for geographically expanding biotech and foreign-invested hospital pilots.

This trial-first, scale-later model demonstrates China’s increasingly refined institutional opening-up framework, where policy innovations undergo constrained local testing before nationwide regulatory adoption.

II. Improving the Regulatory Framework for Foreign-Invested

M&A: New Opportunities for Cross-Border Share Swaps and Strategic Investments

Article 4 of the Action Plan introduces two measures aligned in both design and policy intent: (i) it calls for the accelerated revision of the regulations governing foreign investors' acquisitions of domestic enterprises, and (ii) permits qualified foreign private equity investment institutions to participate, as strategic investors, in securities offerings by listed companies operating in unrelated industries.

1. Anticipated Revision of Circular 10 and Modernization of the Foreign-Invested M&A Regime

At the inception of China's opening-up, foreign investments in China were predominately greenfield investments. As the market in China developed, more foreign investors, including foreign investors ultimately controlled by Chinese companies or individuals, started to invest in China by way of mergers and acquisitions. Against this background, the current *Provisions on the Acquisition of Domestic Enterprises by Foreign Investors* were jointly issued by six ministries and commissions including MOFCOM in 2006 and were amended in 2009 ("**Circular 10**").

The case for revising Circular 10 is compelling for at least three reasons.

First, following China's rolled out of the pre-establishment national treatment plus negative list regime, many provisions in Circular 10—especially those requiring MOFCOM's prior approval for mergers and acquisitions by foreign investors, were rendered de facto obsolete. These need to be formally repealed to avoid market confusion.

In particular, the treatment of related-party acquisitions attracts the most market attention. Over the past two decades, these provisions have been of central importance to Chinese companies establishing red-chip structures for overseas listings. China-based companies with a red-chip structure did not have to obtain CSRC approval for their overseas IPOs, on the condition that the red-chip structure was put in

place in compliance with, or at least not in contradiction to, Circular 10. Circular 10 requires related-party acquisitions to obtain MOFCOM approval. In practice, however, such approvals have been virtually impossible to obtain. As a result, market participants have developed a variety of alternative transaction structures to navigate around this requirement, giving rise to diverse market practices.

Since the CSRC rolled out its overseas listing filing regime in 2023, both red-chip listings and H-share listings have fallen under a unified regulatory framework that requires prior filing with the CSRC. This reform has eroded the historical structural advantages of red-chip vehicles and reduced their market prevalence. Nevertheless, red-chip structures retain distinct merits for attracting international investors and facilitating listings outside Hong Kong. It is therefore important to Chinese entrepreneurs as to whether and how they can continue to set up red-chip structure. As the related legislation, the *Regulation on Outbound Investment* (issued by the State Council on June 1, 2026) contemplates detailed implementing rules governing outbound investment by individual mainland residents. The upcoming regulatory framework governing individuals' establishment of offshore financing vehicles, alongside the proposed revision to related-party acquisition provisions under Circular 10, will serve as key barometers of the central government's stance on red-chip arrangements. These two sets of rules will in turn directly shape domestic enterprises' future offshore financing strategies and long-term corporate development trajectories.

Second, the existing provisions governing cross-border share swaps have become outdated. Article 28 of Circular 10 provides that shares used as transaction consideration must be shares in an overseas listed company. By contrast, the *Administrative Measures for Strategic Investment in Listed Companies by Foreign Investors* as revised in December 2024 expressly permit cross-border share swaps using shares in overseas unlisted companies. This inconsistency between regulations needs to be removed.

Third, once the approval mechanism is removed, another important practical question needs to be answered: how should the remaining provisions in Circular 10, i.e., those governing transaction pricing, forms of consideration, payment schedules and valuation requirements operate and be enforced in the absence of an ex ante regulatory approval process? The *Action Plan*'s proposal to "optimize M&A

procedures and requirements relating to transaction consideration and strengthen inter-agency regulatory coordination” is a direct response to these longstanding issues.

2. Strategic Investment Beyond Industry Boundaries

The *Action Plan* permits qualified foreign private equity investors to participate, as strategic investors, in securities offerings by listed companies operating in non-related industries. This represents a breakthrough from the current requirement that “strategic investors” have to “possess significant strategic resources relevant to the same or a related industry as that of the listed company”, which is hard for a private equity investor to satisfy.

This breakthrough unlocks a new entry route for incremental foreign capital in China’s A-share market and preserves institutional capacity for long-term foreign investors including sovereign wealth funds and other global institutional players.

III. Supporting Key Foreign-Invested Enterprises in Domestic Listing and Financing: A Signal of Capital Market Opening

The *Action Plan* is the first national-level policy document to expressly “support qualified key foreign-invested enterprises in raising funds through domestic listing.”

While no statute has ever explicitly barred wholly foreign-owned enterprises (WFOEs) from pursuing domestic listings, practical hurdles tied to corporate form, governance frameworks, foreign exchange oversight and related-party transaction scrutiny have long created compliance friction under A-share listing standards. To date, most foreign-invested A-share listed firms—including Foxconn Industrial Internet Co., Ltd. (601138.SH) and Mindray Medical International Limited (300760.SZ)—are sino-foreign joint ventures or foreign-controlled enterprises, with standalone WFOE A-share listings remaining

extremely scarce. The *Action Plan* signals that a special policy may be formulated to facilitate qualified WFOEs' listing endeavor in the A-share market.

This policy signal carries extra significance against the backdrop of the overseas listing filing regime that the CSRC rolled out in 2023. Following the inclusion of red-chip structures in the filing regime, the frequency of their use has declined substantially. Many small red-chip companies are now weighing dismantling their red-chip setups to pursue H-share listings instead. In this context, opening a domestic listing pathway for WFOEs could ease the costs and complexity of unwinding existing red-chip architectures. Small red-chip companies may directly deploy the WFOE within their red-chip structure as their onshore listing vehicle. This reform expands exit channels for foreign investors in China and incentivizes high-quality assets to return to domestic exchanges.

IV. Facilitating Onshore Reinvestment by Foreign-Invested Enterprises

Article 1(6) of the *Action Plan* calls for the effective implementation of the preferential tax policy applicable to foreign investors that reinvest distributed profits directly in China, and proposes to include a broader range of reinvestment projects by FIEs in the Catalogue of Major and Key Foreign Investment Projects. These measures build upon the policy direction established under China's 2025 foreign investment initiatives.

1. Evolution of the Regulatory Framework for Foreign Reinvestment

Under the foreign investment and foreign exchange regulation regime, foreign reinvestments, depending on the source of the foreign capital, can be divided into two categories: (i) reinvestment using the existing registered foreign exchange capital of the FIE; and (ii) reinvestment using profits generated from the FIE's operations in the PRC. While category (ii) has long been permitted, category (i) is the result of a gradual easing of control over capital account transactions.

A significant milestone came in July 2025, when the NDRC and several other authorities jointly issued the *Notice on Implementing Measures to Encourage Reinvestment in China by Foreign-invested Enterprises* (Fa Cai Wai Zi [2025] No. 928). For the first time, the Notice expressly provided that where an FIE uses its registered foreign exchange capital, or RMB funds converted therefrom, to make a reinvestment, neither the target company nor the equity transferor needs to go through foreign exchange registration procedures. SAFE then in September 2025 issued rules to implement this reformation and further provided that reinvestment funds may be remitted directly to the relevant domestic account without having to go through a reinvestment filing procedure.

With respect to reinvestments funded by retained earnings, the 2025 NDRC notice and the SAFE allowed retained earnings in foreign exchanges to be directly remitted to the accounts of the target company or the equity transferor, as the case may be, without having to be first converted into RMB. This reduces administrative formalities and foreign exchange market risks.

2. Tax Incentives for Profit Reinvestment

Profit reinvestment tax deferrals have long been China's primary tool to retain foreign capital, yet the Action Plan does not launch new tax incentives. The existing rules stem from Circular Cai Shui [2018] No. 102, which lets foreign investors delay withholding tax on qualified onshore reinvestment and cuts their upfront tax burden.

The Action Plan's focus lies in better execution of current tax policies. Many eligible firms fail to claim the incentive due to unclear criteria, filing rules and document requirements. Its commitment to targeted policy benefit delivery points to clearer official guidance, simplified paperwork and wider access to the deferral regime.

The *Action Plan* also seeks to add more reinvestment projects to the Catalogue of Major and Key Foreign Investment Projects. Listed projects enjoy tax perks, simplified forex processes, financing

support and improved government services, delivering clear short-term commercial value for multinationals expanding local operations through profit reinvestment.

V. Supporting Foreign Participation in the Pharmaceutical Industry: Segmented Production and Pilot Opening-up Initiatives

Article 1(3) of the *Action Plan* introduces four interlocking packages of measures to boost foreign investment in China's pharmaceutical sector: (i) speed up supporting rules for segmented pharmaceutical production; (ii) geographically widen biotechnology and wholly foreign-owned hospitals pilots; (iii) support innovative drugs and devices to be covered by commercial insurance; and (iv) create dedicated platforms for foreign pharmaceuticals to enter retail distribution network. These measures constitute a comprehensive policy framework covering the entire pharmaceutical value chain: production, market authorization, insurance reimbursement and retail distribution.

1. Cross-border Segmented Pharmaceutical Production: Institutional Recognition of Global Division of Labor

Segmented pharmaceutical production refers to a production model where different production stages are split across different jurisdictions, with separate pharmaceutical manufacturers responsible for individual production segments. Though widely adopted in the global pharmaceutical industry, this model was long subject to stringent regulatory restrictions in China.

In October 2024, the National Medical Products Administration (“**NMPA**”) issued the *Pilot Work Plan for Segmented Production of Biological Products*, launching trials for segmented manufacturing of selected innovative and clinically urgent drugs. In January 2026, the State Council rolled out the system nationwide by promulgating the revised *Regulations for the Implementation of the Drug Administration Law*.

Real-world application swiftly followed. In May 2026, Nicaricumab Injection of Janssen Pharmaceuticals (a Johnson & Johnson company) became the first imported biological product to adopt segmented domestic production of drug substance in the PRC. Under this arrangement, WuXi Biologics manufactures the active pharmaceutical ingredient, or API, domestically in Wuxi, while Vetter Pharma in Germany completes finished dosage form processing.

The *Action Plan* calls for the swift formulation of implementing rules, which we expect will provide further clarification on issues such as: (i) eligibility criteria for cross-border segmented production; (ii) allocation of quality responsibilities among participating manufacturers; (iii) coordination mechanisms between domestic and overseas regulators; and (iv) compliance obligations across the production chain. This will provide greater policy clarity for MNCs and may help reduce manufacturing costs, shorten supply lead times, and enhance supply chain resilience.

2. Expansion of Biotechnology Pilot Opening-up: From “Testing Ground” to Broader Application Area

Biotechnology—covering human stem cell technologies, genetic diagnosis and therapy technologies—remains one of China’s most tightly regulated sectors for inbound foreign investments. In September 2024, MOFCOM, the National Health Commission, and the National Medical Products Administration issued a notice rolling out expanded opening-up pilots in the biotechnology sector in the Beijing, Shanghai, Guangdong Free Trade Zones and the Hainan Free Trade Port. The document permits FIEs to engage in the development and application of human stem cell, genetic diagnosis and therapy technologies within the designated pilot regions.

According to public information, at least six FIEs have launched new operations or expanded their registered business scope under the pilot programmes, including Merck, JW Therapeutics, Origincell Therapeutics, Frontera Therapeutics, and Neukio Biotherapeutics. MOFCOM officer’s remarks further indicate that the geographical scope of these pilots will be expanded, unlocking additional market access for foreign biotechnology companies.

3. Reimbursement and Distribution Channels: Addressing the “Last Mile” of Innovative Drug and Device Commercialization

The *Action Plan* also addresses two longstanding commercial bottlenecks affecting innovative drugs in the PRC market: reimbursement and distribution. It expressly supports (i) expanding coverage of innovative drugs and medical devices under commercial insurance coverage; and (ii) building cross-industry coordination platforms to facilitate foreign-invested pharmaceutical manufacturers’ access to retail distribution networks. These measures directly target the so-called “last mile” hurdles holding back the commercialization of innovative drugs.

Although China’s National Reimbursement Drug List (“**NRDL**”) has been updated annually in recent years, the inclusion of innovative drugs remains limited, and drugmakers continue to face significant pricing pressure in reimbursement negotiations. As a key pillar of China’s multi-tiered healthcare security system, commercial insurance provides an important supplementary reimbursement channel. By pushing to expand coverage of innovative drugs and medical devices, including those developed by MNCs, the *Action Plan* may afford multinational pharmaceutical companies greater flexibility in pricing and commercialization strategies, while also improving patient access to innovative therapies.

VI. Optimizing the Regulatory Framework for Cross-Border Data Transfers: A Transition from “White Lists” to “Negative Lists”

Article 2(5) of the *Action Plan* introduces two measures concerning the regulation of cross-border data transfers. First, it supports pilot free trade zones (“**FTZs**”) and national pilot cities for the expansion of the services sector to explore the adoption of scenario-specific, field-level negative lists for cross-border data transfers across a broader range of industries. Second, it calls for the formulation of national standards for catalogues identifying important data in sectors including industry,

telecommunications, geographic information, automobiles, pharmaceuticals, seed breeding, aerospace, and civil aviation. Taken together, these measures outline a clear regulatory trajectory from a positive-list approach toward a negative-list framework for governing cross-border data flows.

1. Evolution of the Regulatory Approach: From “General Data Catalogues” to “Field-Level Negative Lists”

The regulation of cross-border data transfers has become one of the most significant compliance issues for FIEs in recent years. A review of the relevant policy developments reveals three parallel and progressively evolving regulatory approaches.

The first approach centered on a “green channel + general data catalogue” model. In July 2023, the *Opinions on Further Optimizing the Foreign Investment Environment and Increasing Efforts to Attract Foreign Investment* proposed two key measures: (i) establishing a green channel for qualified foreign-invested enterprises to facilitate cross-border data transfers; and (ii) on a pilot basis, developing general data catalogues for data that could be transferred freely. This approach was premised on defining a closed set of data types exempt from transfer restrictions and therefore reflected a traditional positive-list regulatory philosophy.

The second approach introduced a “white list” mechanism. In February 2024, the *Action Plan for Solidly Promoting High-Standard Opening-Up and Making Greater Efforts to Attract and Utilize Foreign Investment* proposed establishing a cross-border data transfer mechanism for enterprises from Hong Kong and Macao and exploring the implementation of a cross-border data transfer white list. The white list mechanism remained fundamentally a form of positive-list regulation, and its application is targeted to facilitate data flows within the Guangdong-Hong Kong-Macao Greater Bay Area.

The third and most significant development is the adoption of scenario-specific, field-level negative lists. In August 2024, the Beijing Pilot Free Trade Zone issued the first negative list, covering five sectors: automobiles, pharmaceuticals, retail, civil aviation, and artificial intelligence. The framework

adopts a three-tier classification system comprising data categories, subcategories and granular data fields, thereby identifying with precision the scope of data subject to security assessment requirements. Data falling outside the negative list may be transferred overseas without prior filing or security assessment. This model represents a fundamental shift in regulatory philosophy, from specifying what data may be transferred to specifying only what data may not be transferred. This shift substantially reduces compliance costs and regulatory uncertainty.

By expressly supporting the adoption of scenario-specific, field-level negative lists for cross-border data transfers, the *Action Plan* signals that the innovative regulatory model pioneered by the Beijing FTZ is expected to be promoted nationwide.

This trend has already become apparent in practice. In May 2026, Beijing expanded the application of its negative-list regime from the Beijing FTZ to the municipality as a whole. The scope of coverage increased from five to nine sectors, with the addition of medical devices, autonomous driving, trade and logistics, and banking, encompassing 67 business scenarios and 612 individual data fields. Similarly, in April 2026, Shanghai released an updated cross-border data transfer negative list covering four sectors: reinsurance, international shipping, commerce and trade, and meteorology. These developments indicate that the field-level negative-list model is progressively becoming the preferred regulatory framework for cross-border data governance in China.

2. Catalogues for the Identification of Important Data: From Local Experimentation to National Standards

The *Action Plan* further proposes to “promote the formulation of national standards for catalogues identifying important data in sectors including industrial manufacturing, telecommunications, geographic information, automobiles, pharmaceuticals, seed breeding, aerospace, and civil aviation.”

At present, negative lists issued by different pilot FTZs diverge in covered industries scope, classification granularity, and threshold for identifying important data. As a result, enterprises

operating across multiple cities must assess and comply with different local rules, driving up compliance complexity and administrative costs. The development of national standards therefore signals a much-needed move towards a unified framework for defining important data.

The sectors identified in the Action Plan also merit attention. Among the eight sectors enumerated in the *Action Plan* (manufacturing, telecommunications, geographic information, automobiles, pharmaceuticals, seed breeding, aerospace, and civil aviation), industrial manufacturing, geographic information, seed breeding, and aerospace, have been relatively less covered in earlier pilot FTZ negative lists and thus represent newly expanded areas, indicating that the coverage of cross-border data transfer negative lists is extending from the services sector into manufacturing and strategic emerging industries.

VII. Conclusion

The *Action Plan* is a policy document that both consolidates prior reforms and charts the course for future institutional development. Its core value lies in its institutional logic rather than any single groundbreaking policy. It embodies a clear trajectory of regulatory evolution: from pilot program to institutionalized rules, from lists to standards, and from market access to market operation. This gradual, experience-driven approach to reform preserves policy continuity and provides foreign investors with a clear indication of the future direction of China's foreign investment regime.

That said, the effectiveness of any policy ultimately depends on its implementation. A number of measures in the *Action Plan* will await implementing rules, including the revised Circular 10, detailed pharmaceutical segmented production guidelines, and national standards defining important cross-border transfer data. The quality and release timeline of these supporting measures will have a direct bearing on the practical impact of the *Action Plan*. As legal practitioners advising on cross-border investment, we will continue to monitor the development of these implementing rules and provide

clients with timely legal analysis and practical guidance as the regulatory framework continues to evolve.

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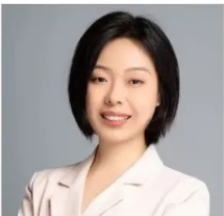
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