

# China Business Advisory

2021 Issue 5

May 2021

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## Further Boosts for Free Trade in Hainan

In mid 2020, China released a master plan to build Hainan into a globally influential and high-level Free Trade Port (“FTP”). Since then, Hainan has implemented policies including visa-free entry, offshore duty-free

shopping and tax-exempt import for approved products. In April 2021, a series of new measures and policies were introduced in conjunction with the opening of the China International Consumer Products Expo (“CICPE”) to expedite reform and opening up of Hainan:

### 1. 22 special measures to relax market access in Hainan FTP

National Development and Reform Commission (“NDRC”) and State Council introduced a series of 22 special measures on 7<sup>th</sup> April 2021, to further open up market access in the Hainan FTP, including:

- (1) Medicine and healthcare: Support development of internet prescription drug sales, innovative development of Hainan's localized high-end medical equipment, drug market access,

development of Hainan's high-end medical beauty industry and removal of restrictions on contract research organization (“CRO”) access, etc.

- (2) Finance: Support development of securities, insurance, funds industries in Hainan. Strengthen data and information sharing and carry out pilot projects to support development of agricultural industry supply chain.
- (3) Culture: Support construction of Hainan International Cultural Relics and Art Trading Center, encourage development of cultural performing arts industry and online game industry, and open up access to the cultural relics industry.
- (4) Education: Encourage universities to transform scientific research achievements and develop vocational education in Hainan. Support well-known domestic universities to establish international colleges in Hainan.
- (5) Others: Open up civil aviation industry, sports market, seed industry market access, and support development of rural tourism and leisure agriculture.

2. Corporate Income Tax (“CIT”) preferential catalog released for Hainan FTP's tourism, modern service, and high-tech industry

According to Caishui [2020] No. 31 - “Notice on Hainan Free Trade Port’s Corporate Income Tax Preferential Policy”, enterprises in tourism, modern service, and high-tech industries that meet the following conditions are exempt from CIT for income deriving from new foreign direct investment:

- Operating profits obtained from newly established overseas branches; or dividends from newly invested overseas subsidiaries with not less than 20% shareholding.
- The statutory CIT rate of the invested country (region) is not less than 5%.

Accordingly, on 9<sup>th</sup> April 2021, the Ministry of Finance and the State Taxation Administration jointly issued a catalogue, clarifying specific scope of tourism, modern service industry and high-tech industry that are applicable to the preferential CIT exemption.

### 3. Hainan released FTP investment guide for 2021

Hainan released its Hainan Free Trade Port Investment Guide 2021 on 20<sup>th</sup> April 2021. The document illustrates the development of the Hainan FTP, and offers important guidance for global investors who is seeking to carry out investment and business in Hainan. Please refer to this link to view or download: <http://www.investhainan.cn/hwh/ Resources/202104/P020210420410519718407.pdf>

### 4. 28 steps to boost Hainan FTP

On 23<sup>rd</sup> April 2021, the Ministry of Commerce and other 19 central government departments jointly released “Notice on Several Measures to Promote Trade Liberalization and Facilitation of Hainan FTP” (“The Notice”). The Notice focused on two major aspects: free and convenient trade in goods, and in services. Totally 28 policy measures were clarified.

Among the measures, the government will relieve curbs on import and export of crude oil, refined oil, sugar and other goods, removing licensing management measures for importing mechanical and

electrical products, and cancel filing and registration for technology import and export business.

Besides, the first CICPE ran from 7<sup>th</sup> to 10<sup>th</sup> May 2021. A total of 70 countries and regions attended the four-day expo, and 2,628 brands represented by 1,505 enterprises from local and abroad participated in the exhibitions. During the Expo, the contract turnover reached CNY1.5 billion. In the context of the epidemic situation, the holding of the Expo shows China's determination and actions in opening up markets to encourage economic growth.

## **Pilot Program for Mutual Recognition and Assistance to Insolvency Proceedings Between the Mainland and the Hong Kong SAR**

On 14<sup>th</sup> May 2021, the Supreme People's Court ("SPC") and the Hong Kong Special Administration Region Government signed a "Meeting Minutes on Mutual Recognition and Assistance to Insolvency Proceedings between the Mainland Courts and the Hong Kong SAR Courts" ("the Minutes"). At the same time, the SPC released an opinion on approving a pilot project to implement the Minutes. The Minutes and the Pilot Project clarified the scope and methods of the insolvency assistance mechanism in the Mainland and Hong Kong.

Key takeaways are summarized below:

### 1. The pilot areas

Shenzhen, Shanghai, and Xiamen in Fujian Province are designated as pilot areas in the Mainland.

The courts in the pilot areas will recognize and assist insolvency procedures in Hong Kong in accordance with the Pilot Project. The courts in Hong Kong will also recognize and assist insolvency proceedings in the Mainland in accordance with common law principles, and the scope is not limited to insolvency proceedings conducted by the Mainland courts in the pilot districts mentioned above.

## 2. The scope of application

Regarding the nature of the procedure, it is similar to collective debt liquidation procedures between the two places. Among them, the insolvency procedures in the Mainland include insolvency liquidation, reorganization and settlement procedures. The insolvency procedures in Hong Kong include compulsory winding up of Hong Kong companies, voluntary winding up of creditors, and those approved by the Hong Kong courts in accordance with Article 673 of the Companies Ordinance of the Hong Kong SAR.

Regarding the jurisdictional requirements, the jurisdiction of the Hong Kong courts over the insolvency proceedings should meet the standard of “center of major interest”, and the debtor’s registration place is presumed to be the location of its major interest center. The Mainland courts will comprehensively consider the location of the debtor’s main office, main place of business, and main assets location.

Regarding the connecting factor, the debtor's main property in the Mainland is required to be located in the pilot areas, or have a place of business or representative office in the pilot areas.

### 3. The legal effect

After the Mainland courts receive the application for recognition and assistance and before making a ruling, they can take protective measures according to the application of the Hong Kong administrator.

After the Mainland courts recognizes Hong Kong's insolvency proceedings, it will have similar effects as the Mainland's initiation of insolvency proceedings, including non-individual liquidation, suspension of relevant litigation, arbitration and enforcement procedures, and cancellation of preservation measures.

The recognition procedure does not have retrospective effect, and the debtor's liquidation is irrevocable in principle.

### 4. Standardization of assistance methods

There are two ways for the Mainland courts to recognize and assist Hong Kong insolvency proceedings:

Upon application, Hong Kong administrators are allowed to perform duties in the Mainland. The scope of performance of duties is limited to the intersection of the laws of the two places.

A Mainland administrator shall be appointed according to the application, who shall be responsible for the management of the debtor's affairs and property in the Mainland, and the administrators of the two places shall cooperate to the maximum extent.

The establishment of cross-border insolvency assistance mechanism between the Mainland and Hong Kong is conducive to the protection of the debtor's assets and the interests of creditors, and the efficient and orderly conduct of insolvency liquidation and reorganization.

## Service Highlight

The Chinese government has been continuously making efforts to improve the commercial conditions to ensure an advantageous and stable business environment for foreign investors, especially during this challenging pandemic time. We are committed to providing our clients comprehensive advice on how to take good advantage of every opportunity in China for the success of their operation in this dynamic economic environment during this special period and beyond. For any assistance or support, please feel free to contact our marketing executive, Ms. Miumiu Chan, by email [miumiuchan@sinobridge-consulting.com](mailto:miumiuchan@sinobridge-consulting.com) or call (852) 3579 8745.

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