



The New Benefits for Foreign-Funded R&D Centers in Shanghai

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1. Introduction

The General Office of Shanghai Municipal Government recently issued the *Regulations of Shanghai Municipality on Encouraging the Establishment and Development of Foreign-funded R&D Centers* (the "**Regulations**")¹. The Regulations have taken effect on December 1, 2020 and are valid for an initial term of five years. The goal of the Regulations is to further attract foreign investment and to promote scientific and technological research and development ("**R&D**") in Shanghai.

The Regulations were issued in response to the *Several Opinions of the State Council on Further Utilization of Foreign Investment (2010)* and as a supplement to the *Several Opinions of Shanghai Municipality on Further Supporting Foreign-funded R&D Centers in Participating in the Building of Shanghai into a Center for Scientific and Technological Innovation with Global Influence (2017)*.

2. Definitions and Recognition

The Regulations provide for three different categories of R&D Centers funded by foreign investors, to which different criteria and benefits apply.

2.1 Foreign-funded R&D Center

A foreign-funded R&D Center refers to an institution established by foreign investor(s) to engage in research, development and experimental development in science and technology.

To be eligible for recognition as a foreign-funded R&D Center, the applicant shall:

- (1) be a foreign-invested enterprise duly established in Shanghai;
- (2) be engaged in specific R&D areas and projects and have fixed premises, instruments and other conditions necessary for scientific research; and
- (3) is funded with a total R&D investment amount of at least USD 2 million.

2.2 Global R&D Center

A Global R&D Center is a foreign-funded R&D Center of global reach of a company, which has exclusive R&D platforms, undertakes key steps and most of the processes of the company's global R&D projects and of which the project development progresses in parallel with comparable global R&D projects. A foreign-funded R&D Center can be upgraded to a Global R&D Center if:

- (1) it is appointed by its parent company as the R&D Center of the highest level worldwide that undertakes global R&D projects;
- (2) it is funded with a total R&D investment amount of at least USD 10 million; and
- (3) the amount of the R&D investment it received in the preceding year represents 10% of the total R&D investment amount of its parent company.

2.3 Foreign-funded Open Platform for Innovation

A foreign-funded Open Platform is an innovative form of a foreign-funded R&D Center. It provides instruments, R&D premises, and professional support to promote the cooperation with small and medium enterprises and innovative teams on a project basis.

¹ Original Chinese text:

<http://www.shanghai.gov.cn/nw12344/20201124/585e07c468d24a2eb8adf9ca1420ea5d.html>; Official English Translation of the Regulations: https://en.sww.sh.gov.cn/2020-12/01/c_424414.htm.



To be eligible for recognition as a foreign-funded Open Platform, the applicant shall:

- (1) receive a total investment of at least USD 2 million;
- (2) have R&D premises of at least 1000 square meters;
- (3) carry out at least 10 signed projects; and
- (4) dispose of necessary instruments for R&D and receive guidance from international experts as well as resources including cutting-edge technologies and talents.

2.4 Application

The commerce authority of Shanghai will handle applications for the recognition a foreign-funded R&D Centers. The Pudong New Area government, Lin-gang Special Area Administration, Administration Committee of Hongqiao Central Business District and Zhangjiang Science City Development and Administration Office are authorized to handle the recognition of foreign-funded R&D Centers within their respective regions.

3. Facilitations and Benefits

In the following, we will provide an overview of the facilitations and benefits a foreign-funded R&D Center may profit from.

3.1 Customs Clearance

In our experience, the facilitation of customs clearance is one of the key considerations for foreign-funded R&D Centers. According to the Regulations, the procedures for the clearance of certain imports of R&D instruments by qualified foreign-funded R&D Centers will be simplified.

Subject to the approval of the customs authority, a reasonable time extension of the current maximum term during which certain second-hand key R&D equipment is allowed to be stationed in China may be granted.

A joint oversight mechanism of different authorities will be used to assess the origin, safety and necessity of special import items for research, development and production imported by foreign-funded R&D Centers that are on a so-called "White List".

3.2 Employment

Talent retention is essential for the success of any R&D Center. Hence, employment and visa policies will affect the willingness of foreign investors to set up an R&D Center in China. Under the Regulations, both foreign and Chinese employees of R&D Centers will enjoy more favorable treatment when applying for visa, work and residence permits (for foreign employees) and for the so-called "Hukou" (for Chinese employees). Subsidies for housing and training will also be provided to qualified employees of foreign-funded R&D Centers.

3.3 Intellectual Property Rights Protection

The availability of intellectual property rights protection is considered as one of the main barriers for foreign investors to set up a foreign-funded R&D Center in China. The New Foreign Investment Law that entered into force on January 1, 2020 already includes provisions that aim to strengthen the protection of intellectual property rights of foreign investors in China. The Regulations further provide for the acceleration in building the China (Shanghai) Intellectual Property Rights Protection Center to provide one-stop-shop services that promise to include rapid patent examination, confirmation and protection. Government authorities will provide funding in support of the development of domestic and foreign invention patents registered by foreign-funded R&D Centers in China.



3.4 Taxes and Tariffs

Tax breaks are a common form of government incentives to attract foreign investment. Pursuant to the Regulations, imports used for scientific R&D by qualified foreign-funded R&D Centers will be exempted from tariffs, valued added tax (“**VAT**”) and consumption taxes. Further, the Regulations confirm that the VAT levied on purchases of domestically manufactured equipment by foreign-funded R&D Centers will be refunded in full.

3.5 Business Opportunities

Foreign-funded R&D Centers will be provided with business opportunities to cooperate with local universities, research institutions and enterprises to conduct research on key technologies and educate postgraduates. Foreign-funded R&D Centers will also be eligible to participate in government projects and projects in key sectors (including biomedicine and artificial intelligence).

3.6 Financial Services

To facilitate the access to funding, the People’s Bank of China and the State Administration of Foreign Exchange shall support banks in providing services to foreign-funded R&D Centers for cross-border fundraising, trade in technology, franchising and centralized fund management based on free trade accounts, as well as facilitating employees’ participation in equity incentive schemes. Financial institutions are also encouraged to optimize the procedures for foreign exchange settlement under non-trade accounts.

3.7 Other Facilitations and Benefits

In addition to the facilitations and benefits described above, the Regulations also provide for other facilitations and benefits, namely:

- (1) a guarantee to use land to meet the reasonable requirements of the foreign-funded R&D Centers;
- (2) subsidies and funding for qualified projects as well as for the establishment and rent of property; and
- (3) facilitation of environmental impact assessments and hazardous waste administration.

Separately, the Regulations allow the district governments, key functional areas and development zones to draft their own policies based on their specific needs and circumstances.

3.8 Comparison to the Establishment of Regional Headquarters of MNCs

Besides the Regulations governing R&D Centers, the municipality of Shanghai has also enacted the *Provisions of Shanghai Municipality on Encouraging Establishment of Regional Headquarters of Multinational Companies* (the “**Provisions**”). The Provisions set forth the benefits multinational corporations may enjoy if they decide to establish a Regional Headquarter or Head Office in Shanghai. Although there are certain overlaps in terms of recognition and benefits, a foreign-funded R&D Center must be distinguished from a regional headquarter or head office of multinational corporations (collectively, the “**HQs**”) because of the different legal provisions that govern them.

The main difference between an R&D Center and a HQ is that a HQ shall be authorized by its parent company to perform headquarter functions in the region for more than one country, while the recognition of a foreign-funded R&D Center will only depend on whether it engages in R&D. The choice of whether to establish a HQ or a foreign-funded R&D Center (or both) depends on strategic considerations of the parent company.



4. Conclusions and Recommendations for Foreign Investors

Compared to the previous regulations of Shanghai, the Regulations further integrate the existing supporting measures and incentives and thereby facilitate the future establishment of foreign-funded R&D Centers in Shanghai. The benefits described above may prompt a foreign-invested enterprise to apply for the recognition as a foreign-funded R&D Center. However, as the Regulations have just entered into force and some of the provisions are still vague, their implementation by the competent authorities will decide how frequently foreign-invested enterprises make use of the Regulations and the benefits set forth therein. Based on our experience, there will be room for individual negotiations.

We suggest that interested foreign investors conduct further enquiries with the relevant authorities, especially with the administration offices of the designated special areas, to obtain a full list of potential benefits during the decision-making process.

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