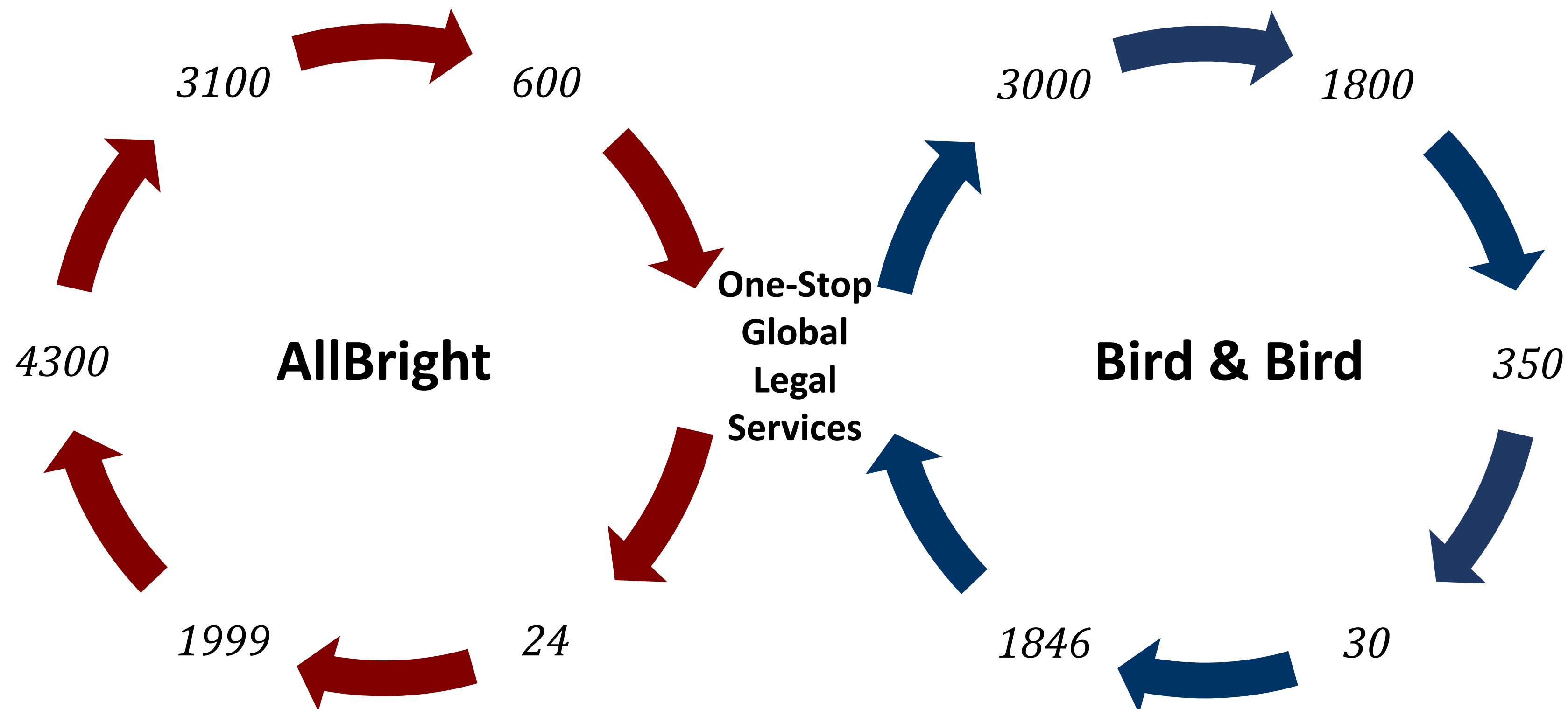




FDI Policies in China

AllBright (AB) + Bird & Bird (BB) = Global Legal Services





Bing-guang YU

Attorney-at-law/Senior Partner

AllBright Law Offices

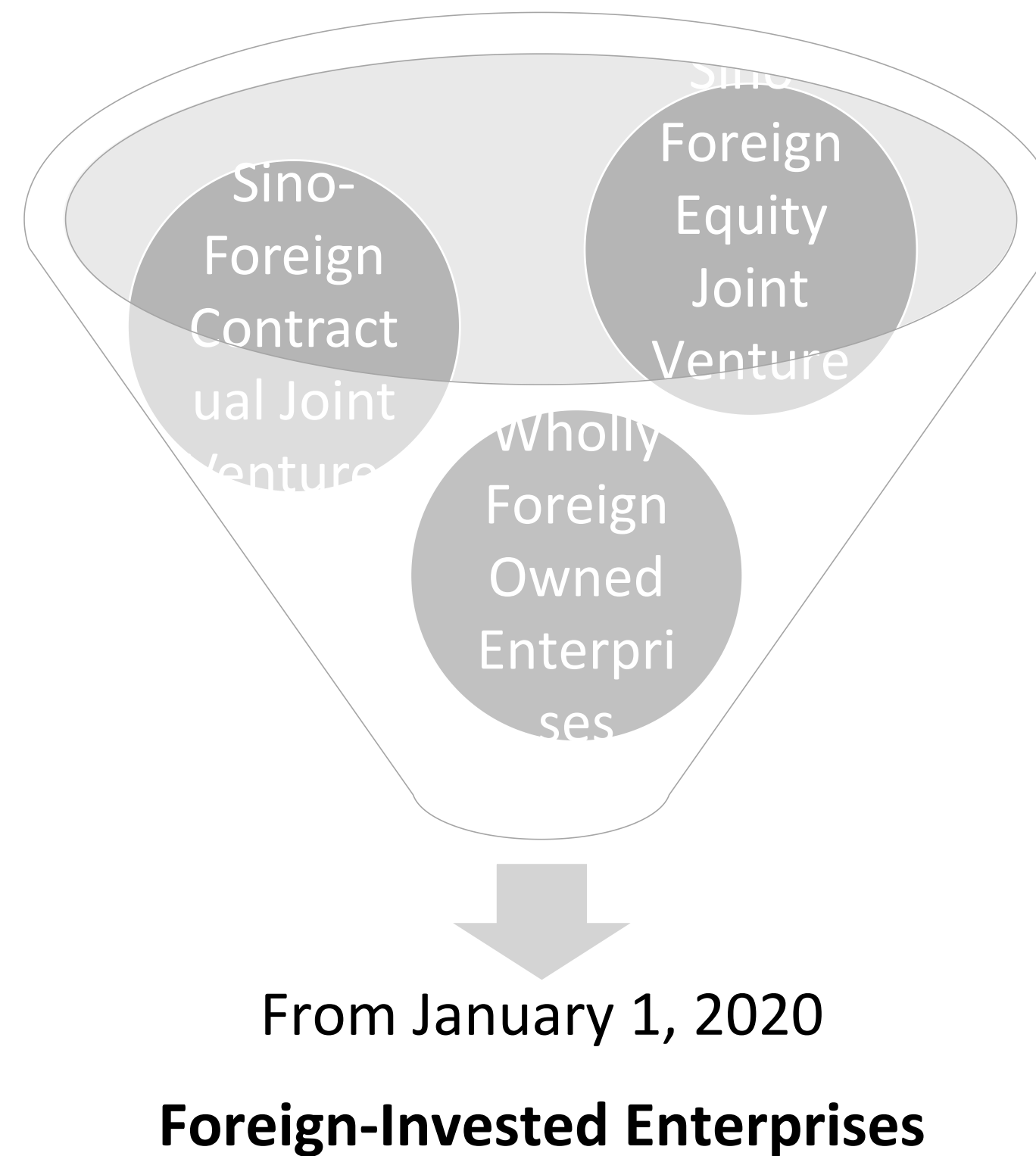
Mr. Bingguang YU is a Senior Partner of AllBright Law Offices, based in Shanghai Headquarter. He is also a permanent representative of AllBright Law Offices (London) Limited.

Mr. Yu has rich experience on providing capital market legal services, such as IPO, M&A, funds, PE financing, FDI etc. Mr. Yu has provided legal services for hundreds of Chinese and foreign businesses in terms of investment and financing, establishment of new companies, inbound and outbound M&As, restructuring and asset restructuring, domestic and overseas IPOs, Asset-backed Securitizations, PE financing and funds-related legal services. Mr. Yu was engaged as permanent and/or project legal counsel for many companies. He is also invited to act as senior expert legal counsel by many renowned institutions, such as CGGT (China Going Global Think Tank), ShangLian Think Tank, Elite V-Next Alliance, LinGang Innovation Management Institute, Shanghai State-owned Assets Journal and The Chamber of Commerce of Liaoning Province etc.



Foreign Direct Investment

- The Foreign Investment Law (FIL) took effect on January 1, 2020.
It is a unified fundamental law of China in the foreign investment area.



What benefits does the FIL bring to investors?

- “National Treatment plus Negative List”



Negative List

- The 2013 Negative List
 - In September 2013, the Shanghai Government formulated the Negative List (the 2013 Negative List) for Access of Foreign Investment to China (Shanghai) Pilot Free Trade Zone (FTZ).
 - Procedures mainly include administration measures, such as restriction on registered capital, equity ratio and business scope, etc.
- The 2020 Negative List
 - The newly published 2020 Negative List in the FTZs cuts the number of restricted or prohibited items from 190 down to 30. The Negative List applied outside the FTZs contains 33 items.
 - The lists further relax the restriction on foreign investment to certain industries.
 - Investment in manufacturing is almost opened up.

Version	2013	2014	2015	2017	2018	2019	2020
List	190	139	122	95	45	37	30 (FTZ) 33 (National)

What benefits does the FIL bring to investors?

More flexible corporate forms: the same as domestic ones

e.g. A foreign invested company shall comply with the domestic Company Law.

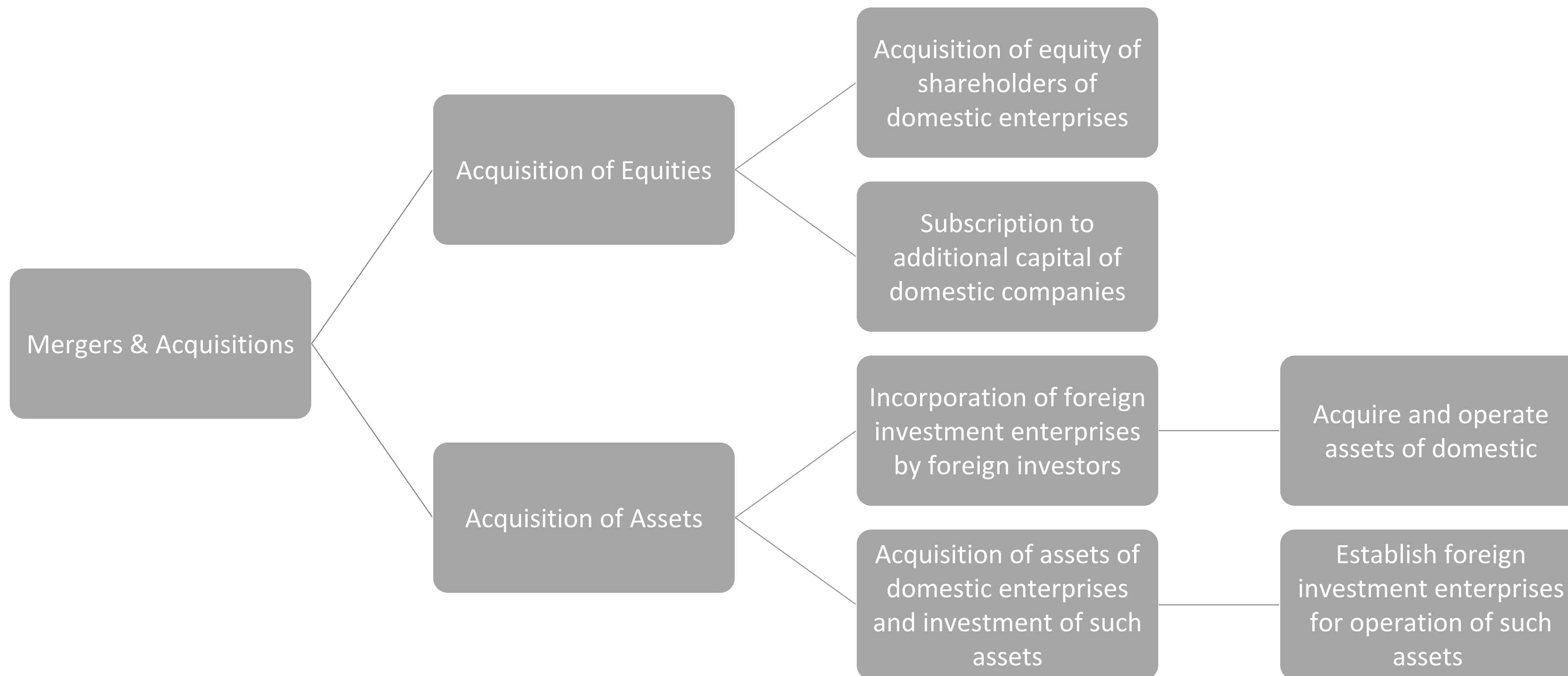
*for existing FIEs: a five-year transition period

Matter	Domestic Company Law (under the FIL)	Previous FIE laws (lack of legal flexibility)
Foreign investment ratio	No requirements	Normally no less than 25%
Highest authority	Shareholders' meeting	Board of directors
Quorum of the highest authority's meeting	No requirements	Two-thirds of directors or committee member (CJV)
Major issue decision mechanism	Shareholders' resolution (two-thirds)	Unanimous approval by directors present at the meeting
Equity transfer restrictions	Consent of more than half of the other shareholders (unless otherwise stipulated in AoA)	Unanimous consent of all other shareholders
Dividend distribution	Distributions based on proportion of paid-in capital (unless otherwise agreed by all shareholders)	Distribution based on registered capital ratios
Term of directors	No more than three years	EJV: Four years; CJV: no more than three years

What benefits does the FIL bring to investors?

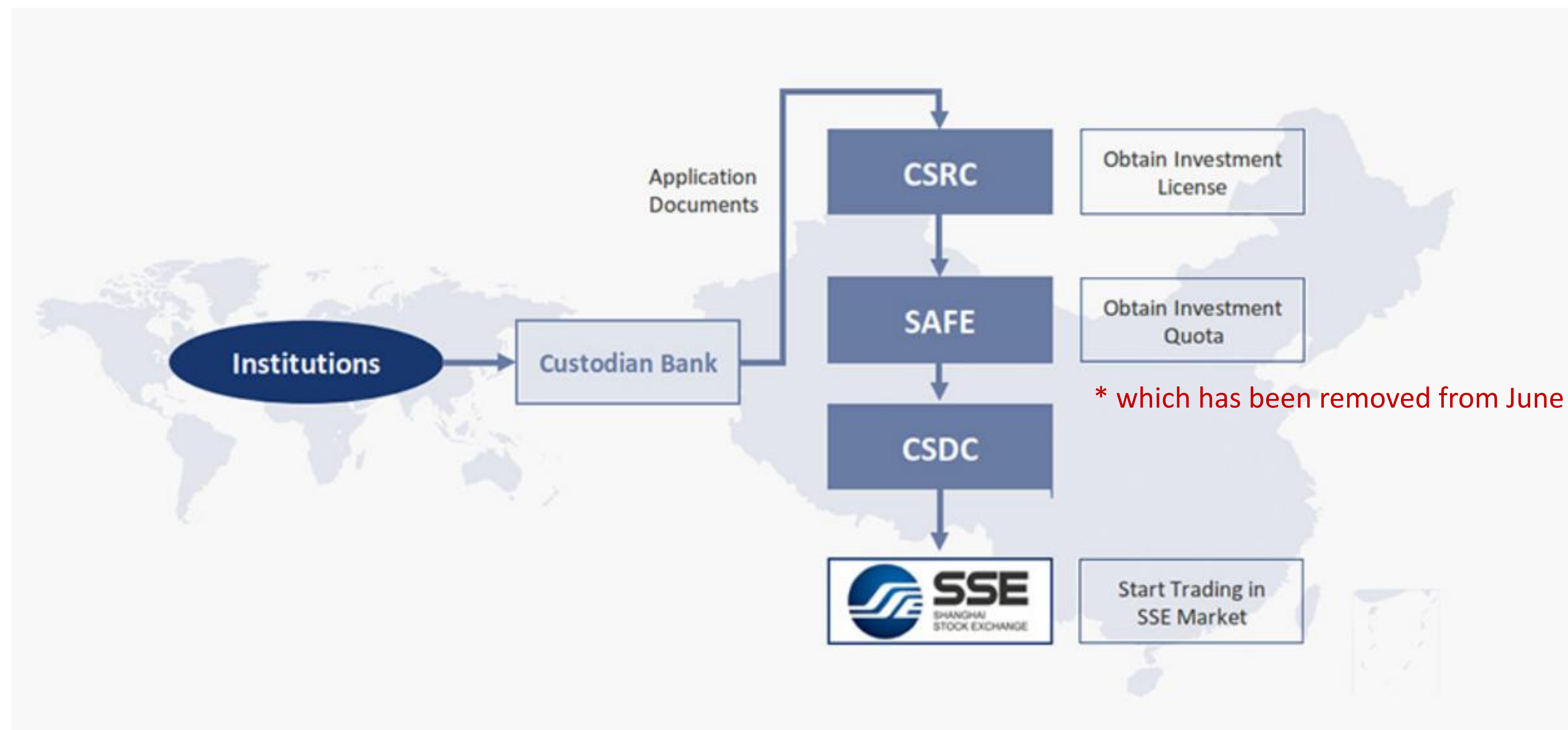
- **Financing:**
 - Public offering of securities (e.g. stocks, corporate debts, etc.)
- **IP Rights & Commercial Secrets Protection:**
 - No forced technological transfer through administrative measures
- **Free Remittance:**
 - Legally received profits and proceeds
 - Free remittance inward and outward in RMB yuan or a foreign currency
- **Government procurement, license application, standard-making:**
 - Fair competition and equal treatment
- **Compensation and remedies for expropriation**

Mergers & Acquisitions



QFII & RQFII

- **What is QFII/RQFII?**
 - Qualified Foreign Institutional Investors
 - RMB Qualified Foreign Institutional Investors
- Allowing specified licensed international investors to participate in mainland China's stock exchanges



QFII & RQFII

• Qualification for QFII License

Type of institution	Track record and operational experience	Assets under management
Asset Management	2 years or more	Not less than USD 500 million in securities assets in the last financial year
Insurance companies	2 years or more	Not less than USD 500 million in securities assets in the last financial year
Securities companies	5 years or more	Not less than USD 500 million in net assets and not less than USD 5 billion in securities assets in the last financial year
Commercial banks	10 years or more	Not less than USD 300 million in tier one capital and not less than USD 5 billion in securities assets in the last financial year
Others (pension fund, charity fund, endowment fund, trust company, government investment institution)	2 years or more	Not less than USD 500 million in securities assets in the last financial year

- managerial personnel, governance structure, countries or regions with a Memorandum of Understanding...

QFII & RQFII

- *Provision on Fund Administration of Domestic Securities and Futures Investment by Foreign Institutional Investors* took effect on June 6, 2020.
- **Investment Quota Limitation has been removed from June 6th, 2020.**
 - Registration-based rules for qualified investors when they make cross-border funds transfer or currency exchange
 - QFII to freely choose which currency and when they remit money to the country
 - Simplified outward remittance procedures for QFII's securities investment gains
special audit reports on investment income and tax filing form, not required only need : tax commitment letters

QFLP & R-QFLP

- **What is QFLP/R-QFLP**

 - Qualified Foreign Limited Partnership

 - RMB Qualified Foreign Limited Partnership

- **Allowing foreign investors to form an onshore RMB fund to invest in private Chinese companies**

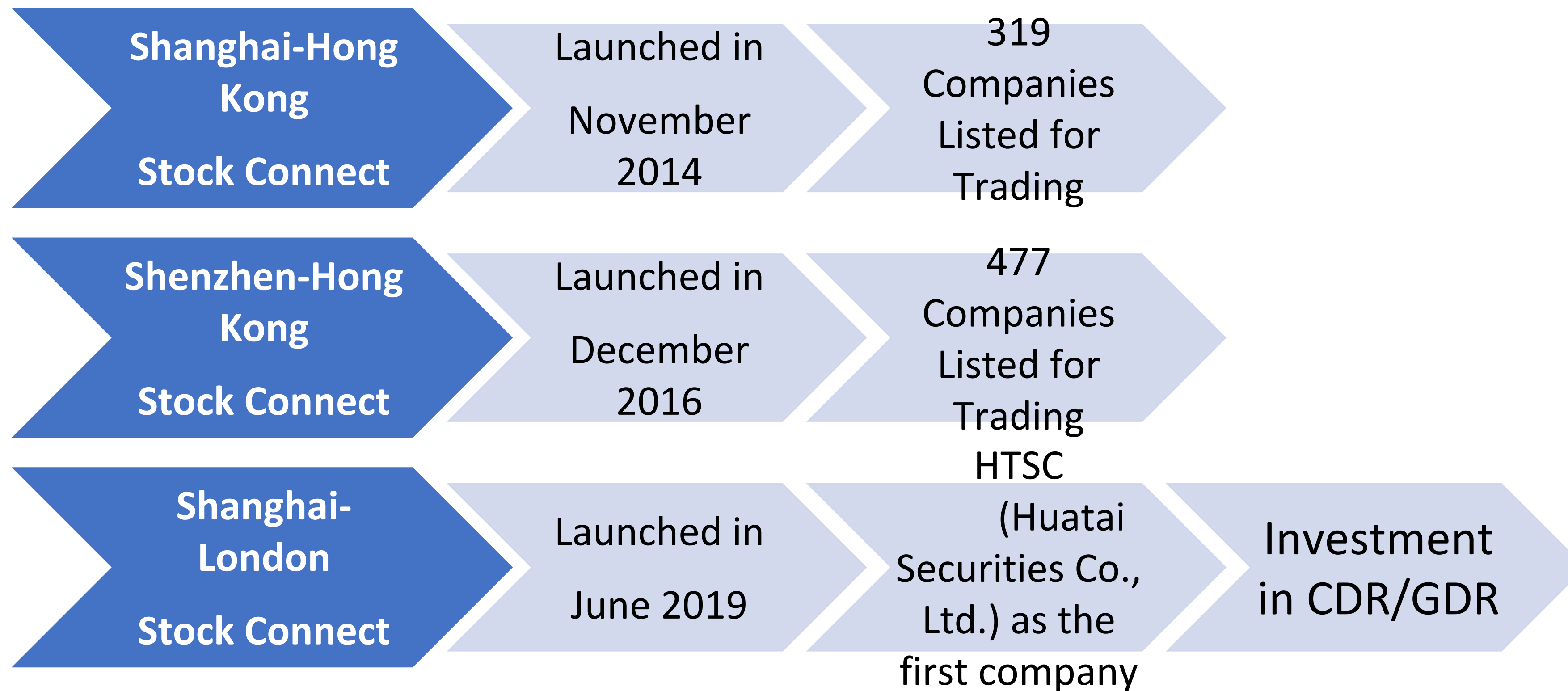
- **Pilot Programme in 10 cities:**

 - In Shanghai(上海), Beijing(北京), Chongqing(重庆), Tianjin(天津), Shenzhen(深圳), Qingdao(青岛), Guiyang(贵阳), Pingtan(平潭), Zhuhai(珠海), Guangzhou(广州).

- Big private equity players such as Blackstone, TPG, Carlyle, have all established QFLP funds.

- JPMorgan also has a QFLP fund in Beijing.

Various Stock Connects



Comparisons

	QFII/RQFII	Shanghai-Hong Kong Stock Connect	Shanghai –London Stock Connect
Primary Market Activities	--	--	Initiated by mutual cross listings of issuers, either by capital raising or technical listing
Cross-border trading, clearing & settlement	One-way, executed between QFII/RQFII investors and their local Chinese brokers and custodians	Two-way, investors trade directly in each other's market, clearing and settlement centralized by HKSCC and CSDC (China Securities Depository and Clearing Corporation)	Two-way Designated Brokers enabled to trade directly in each other's market. Cross-border settlements are executed by broker's respective custodians
Eligible investors	Selected institutional investors	SSE Members, institutional investors and eligible individual investors Southbound, and HKEX members and their clients Northbound	SSE Members, institutional investors and eligible individual investors Westbound, and LSE members and their clients Eastbound
Eligible Securities	Shares, bonds and warrants listed in exchange, bonds listed in CIBM, stock futures and certain funds	Constituents of SSE 180 Index and SSE 380 Index, SZSE 500 Index and the SZSE S/M CII (>RMB6bn), and certain A+H shares Northbound, and constituents of HSLI, HSMI and HSSI (>HKD5bn), and certain A+H shares Southbound	DRs issued by companies in each other's markets
Quota	Quota limits has been removed in June 2020	Quota applied to the whole market daily trading	Similar quota to HK initial overall and daily trading quotas. Designated brokers granted additional trading quota. Individual applications for investors are not required. Local trading is free of restrictions.

Opening up of the financial industry

- No later than April 1, 2020, China shall **remove the foreign equity cap** in the life, pension, and health insurance sectors and allow wholly U.S.-owned insurance companies to participate in these sectors.
- No later than April 1, 2020, China shall **remove any business scope limitations, discriminatory regulatory processes and requirements, and overly burdensome licensing and operating requirements** for all insurance sectors (including insurance intermediation).

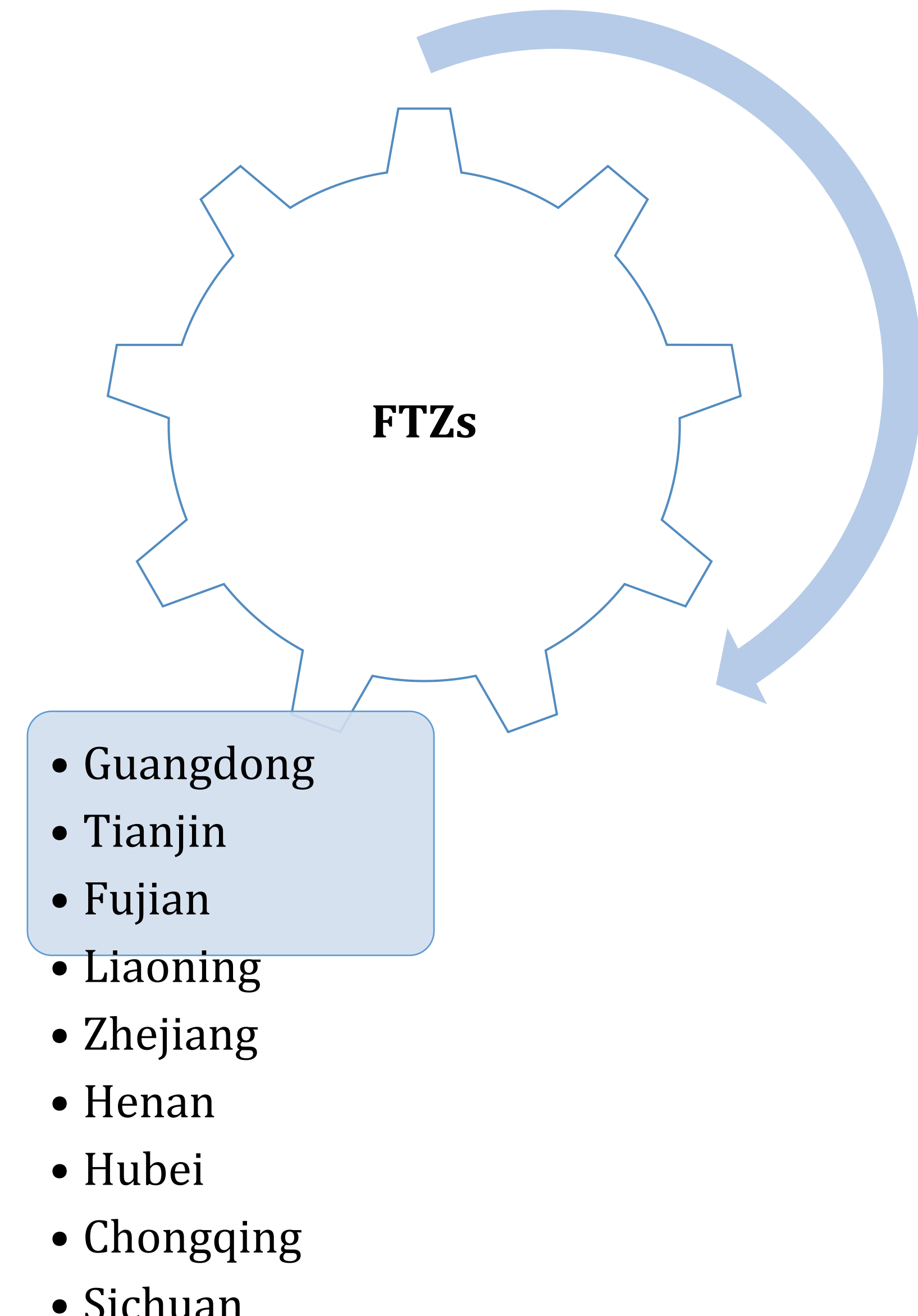
Phase-One Trade Agreements between China and the United States

Opening up of the financial industry

- *Opinions of the State Council on Further Proper Utilization of Foreign Investment* took effect on October 30, 2019.
- **Comprehensive opening up:**
 - **Cancel** the restriction that **foreign shareholding ratio** shall not exceed **51%** in 2020
Securities companies, securities investment fund management companies, futures companies and life insurance companies
 - **Cancel** the restriction on the **business scope**
Foreign banks, securities companies, fund management companies and other financial institutions
 - **Reduce** the **quantitative access conditions**
 - **Cancel** certain requirements for the **total assets**
 - Expand the **scope of shareholders** that can invest in foreign banks and foreign insurance institutions
 - Allow **foreign insurance group companies** to invest in and establish insurance institutions
 - Apply consistent administrative **licensing matters**

Free Trade Zones in China

- Since the Free Trade Zone was formally announced in Shanghai on 29th September 2013, ten other FTZs have been established with the goal of attracting foreign investment.
- Companies in FTZs are able to exercise additional autonomy over their business and receive certain tax incentives.
- Companies in FTZs are applied the **FTZ Negative List** with fewer restrictions (37 items in Year 2019) than the one outside FTZs (40 items in Year 2019).



Example: Lin-gang Special Area

- Lin-gang Special Area was established in August 2019.
- The total area is 873 sqkm, with the pioneering promoter area of 119.5 sqkm.
- Policy support - the “6 plus 2” policy innovation:
 - Freedom of investment
 - Freedom of trade
 - Free flow and exchange of capital
 - Free transport
 - Talent settlement
 - Easy information connection
 - Tax incentives
 - Risk control



The red area: pioneering promoter area

Example: Lin-gang Special Area – Policy Support

- **Tax system and policies:**
 1. Reduced **corporate income tax** of 15% within 5 years
(industry: integrated circuits, artificial intelligence, biomedicine, civil aviation and other key areas)
 2. Subsidy policy for the difference in **the individual income tax** burden on overseas talent
 3. **Bonded/duty-free** goods and services in Yangshan Bonded Zone
 4. International transport carried out by any ship manufactured within the territory of China and registered with "China Yangshan Port" to be deemed as export and entitled to **export tax rebate**

Example: Lin-gang Special Area – Policy Support

Financial Institutions	Incentives
<p>Licensed financial institutions (institutions in banking, securities, insurance, futures, fund management, trust etc.)</p> <p>New financial institutions (finance leasing companies, wealth and asset management institutions, third-party payment companies, asset appraisal agencies etc.)</p> <p>Investment enterprises (RMB and foreign currency equity investment management enterprises, equity investment enterprises, etc.)</p> <p>Financial Functional Institutions (trading places, financial element trading platforms, clearing and settlement institutions etc.)</p>	<p>Settlement reward of up to 60/20/20/20 million yuan; Certain comprehensive contribution reward according to their annual financial contribution; Other rewards</p>
<p>Newly established financial institutions that purchase office space in the Special Area for their own use</p>	<p>A one-time subsidy of up to 12% of the actual purchase price (not exceeding 60 million yuan)</p>
<p>Key financial institutions</p>	<p>Rewards on a case-by-case basis</p>

Example: Lin-gang Special Area – Policy Support

- **Pilot projects to integrate domestic and foreign currencies in free trade accounts**
 - The funds raised abroad by enterprises in the Special Area, the funds raised abroad and the income obtained from cross-border services by qualified financial institutions can be used independently for business and investment activities in Lin-gang Special Area and elsewhere abroad.
- **To encourage multinational companies to set up global or regional fund management centres and headquarters in Lin-gang Special Area.**



中文概述 中国外商投资相关政策

《外商投资法》

• 《外商投资法》的实施

《外商投资法》是我国外商投资领域新的基础性法律，该法生效时间为2020年1月1日。《外商投资法》取代《中华人民共和国中外合资经营企业法》、《中华人民共和国外资企业法》及《中华人民共和国中外合作经营企业法》（合称“外资三法”），成为中国在外商投资领域统一的基本法。

• 《外商投资准入特别管理措施（负面清单）》

《外商投资法》最大的不同之一就是引入了“准入前国民待遇加负面清单”的管理制度。准入前国民待遇是指国民待遇延伸至投资准入阶段，即在企业设立、取得、扩大等阶段给予外国投资者及其投资不低于本国投资者及其投资的待遇。负面清单即指国家规定在特定领域对外商投资实施的准入特别管理措施。国家对负面清单之外的外商投资，给予国民待遇。《外商投资法》第二十八条对负面清单制度的具体含义进行了明确：

- （1）外商投资准入负面清单规定禁止投资的领域，外国投资者不得投资；
- （2）外商投资准入负面清单规定限制投资的领域，外国投资者进行投资应当符合负面清单规定的条件；
- （3）外商投资准入负面清单以外的领域，按照内外资一致的原则实施管理。

国家发展改革委、商务部发布了《外商投资准入特别管理措施（负面清单）（2020年版）》和《自由贸易试验区外商投资准入特别管理措施（负面清单）（2020年版）》。其中全国外商投资准入负面清单由2013年的190条减至2020年的33条，2020年自贸试验区外商投资准入负面清单减至30条。

《外商投资法》

- **外商投资企业可按照我国法律适用更灵活的公司组织形式、组织机构及其活动准则**
“外资三法”废止之后，《外商投资法》第三十一条规定，之后设立的外商投资企业的组织形式、组织机构及其活动准则，均适用《中华人民共和国公司法》、《中华人民共和国合伙企业法》等法律的规定。对于已经设立的外商投资企业，《外商投资法》第四十二条规定了一个五年的过渡期，在五年过渡期内，已经设立的外商投资企业可以继续保留原企业组织形式等。
- **《外商投资法》的其他政策红利包括以下方面：**
 - 融资：**可公开发行证券（例如股票、公司债等）
 - 保护知识产权和商业秘密：**不通过行政措施强制技术转让
 - 免费汇款：**外国投资者在中国境内的出资、利润、资本收益、资产处置所得、知识产权许可使用费、依法获得的补偿或者赔偿、清算所得等，可以依法以人民币或者外汇自由汇入、汇出
 - 政府采购、许可证申请、标准制定：**公平竞争，平等对待
 - 征用的补偿和救济**

境外投资者投资中国资本市场相关政策

- **《境外机构投资者境内证券期货投资资金管理规定》2020年6月6日开始实施**
2020年6月6日开始，境外合格机构投资者/人民币境外合格机构投资者（QFII/RQFII）投资额度限制取消。
合格境外有限合伙人/人民币合格境外有限合伙人（QFLP/R-QFLP）已在10个城市试点。
- **沪港通/深港通**
香港与海外投资者可买卖上交所市场的若干股票包括上证180指数的成份股、上证380指数的成份股，以及不在上述指数成份股内但有H股同时在联交所上市及买卖的上交所上市A股。
（但不包括下列股票：(a) 不以人民币交易的沪股；及(b) 被实施风险警示的沪股。）
香港及海外投资者将可买卖在深交所市场上市的个别股票包括深证成份指数和深证中小创新指数成份股中所有市值不少于人民币60亿元的成份股，以及有相关H股在联交所上市的所有深交所上市A股。
（但不包括：(a) 不以人民币交易的深股；及(b) 被实施风险警示或除牌安排的深股。）
- **沪伦通**
中国证监会和英国金融行为监管局2019年6月17日发布沪伦通《联合公告》，原则批准上海证券交易所和伦敦证券交易所开展沪伦通。
初期从存托凭证起步。存托凭证是由存托人签发，以境外证券为基础在境内市场发行，代表境外基础证券权益的证券。沪伦通存托凭证业务包括东西两个业务方向。东向业务是指符合条件的伦交所上市公司在上交所主板上市中国存托凭证（简称CDR）。西向业务是指符合条件的上交所的A股上市公司在伦交所主板发行上市全球存托凭证（简称GDR）。

金融业对外资的开放政策

- 《国务院关于进一步做好利用外资工作的意见》于2019年10月30日起施行。

金融行业综合开放政策包括:

- 全面取消在华外资银行、证券公司、基金管理公司等金融机构业务范围限制。
- 减少外国投资者投资设立银行业、保险业机构和开展相关业务的数量型准入条件。
- 取消外国银行来华设立外资法人银行、分行的总资产要求，取消外国保险经纪公司在华经营保险经纪业务的经营年限、总资产要求。
- 扩大投资入股外资银行和外资保险机构的股东范围，取消中外合资银行中方唯一或主要股东必须是金融机构的要求，允许外国保险集团公司投资设立保险类机构。
- 继续支持按照内外资一致的原则办理外资保险公司及其分支机构设立及变更等行政许可事项。
- 2020年取消证券公司、证券投资基金管理公司、期货公司、寿险公司外资持股比例不超过51%的限制。

上海自由贸易区设立临港新片区

2019年8月6日，国务院正式发布中国（上海）自由贸易试验区临港新片区总体方案，8月20日，临港新片区正式揭牌。

临港新片区提出探索实施“6+2”八大制度创新，6即5个自由加1个便利，2即税收制度和风险防控两项制度。从投资自由、贸易自由、资金自由、运输自由、人员从业自由、信息便捷联通等5个自由1个便利创新。两项制度，即具有国际竞争力的税收制度和全面的风险管理制度。将瞄准产业关键领域的核心环节，实施特定情况15%企业所得税，对境外人才个税税负差额进行补贴。

税收或其他政策还包括：

洋山保税区货物及服务的保税或免税政策

在确保有效监管、风险可控前提下,对在“中国洋山港”登记从事国际运输的境内制造的船舶,视同出口,给予出口退税。

自贸账户本外币一体化试点。区内企业从境外募集的资金、符合条件的金融机构从境外募集的资金及其提供跨境服务取得的收入，可自主用于新片区及境外的经营投资活动。

鼓励跨国公司在临港特区设立全球或地区基金管理中心和总部。