Special Management Measures (Negative List) for the Access of Foreign Investment (2018) Clashes with CEPA

Order of the National Development and Reform Commission of the People’s Republic of China and the Ministry of Commerce of the People’s Republic of China No.18, Special Management Measures (Negative List) for the Access of Foreign Investment (2018), entered into force on 28 July 2018. The special administrative measures for foreign investment access (also known as the negative list on foreign investment access) as provided in the Catalogue for the Guidance of Foreign Investment Industries (Revised in 2017), shall be repealed simultaneously and it is encouraged to continue the said catalogue of foreign investment industries.

Culture, entertainment and foreign investments sectors on the Negative List 2018:

(30) News and publications
40. Foreign investors are prohibited from investing in news institutions (not limited to news agencies).
41. Foreign investors are prohibited from investing in news services or the publication and editing of books, newspapers, magazines, audio-visual products and electronic publications

(31) Broadcast and television
42. Foreign investors are prohibited from investing in television stations, radio and television channels (rate), radio and television transmission coverage networks (transmitting station, relay station, broadcast satellite, satellite uplink station, satellite receiving and broadcasting stations, microwave station, monitoring station, and cable TV network), radio and television video on demand services and satellite broadcasting television installation services of ground reception facilities.
43. Foreign investors are prohibited from investing in broadcasting or television, or the production of broadcast or television programs

(32) Film production, distribution, and screening
44. Cinema construction and operation must be joint ventures, in which the majority stake is controlled by Chinese.
45. Foreign investors are prohibited from investing in film production companies, distribution companies, cinema companies, and film import businesses.

(33) Cultural relics
46. Foreign investors are prohibited from investing in museums or auction and sales of cultural relics.

(34) Culture and entertainment
47. Artistic performance groups must be controlled by the Chinese.
48. Foreign investors are prohibited from investing in cultural performance groups.

However, the new Negative List did not address its potential clash with the terms on “Hong Kong service suppliers are permitted to construct, renovate and operate cinema theatres on an equity joint venture or contractual joint venture basis with majority Hong Kong ownership” in the Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA) announced in 2003. There was also no explanation on Hong Kong-financed cinema construction in the Mainland, “in which the majority stake is controlled by Chinese.”