

China Insight



China enacts New Negative Lists and New Catalogue of Industries for Encouraged Foreign Investment

Dear Sir or Madam,

Please find enclosed the latest update on further liberalization of market access of foreign investors in China.

Kind regards,

CMS, China

For decades foreign investment into China has been subject to approval by the competent Authority of Commerce ("AoC") and registration with the competent Market Supervision Administration ("MSA" – formerly known as Administration for Industry and Commerce). Whether foreign investment in a specific industry sector was encouraged, restricted or prohibited is stipulated in the Guideline Catalogue of Industries for Foreign Investment. In the past two years, China has moved to a so-called negative list approach, i.e. the approval requirement has been abolished and foreign investment is now only subject to recordal at the competent AoC and registration with the competent MSA, unless the project is in industry sectors which are listed in the so-called Negative Lists. In the latter case, the project remains subject to approval by the competent AoC. There are different Negative Lists for free trade zones ("FTZs") and for areas outside of FTZs. These Negative Lists have been regularly updated every year since 2017.

On 30 June 2019, the PRC National Development and Reform Commission ("NDRC") and the PRC Ministry of Commerce ("MOC") jointly issued another update, i.e. the *Special Administrative Measures (Negative List) for Foreign Investment Access, 2019 version* ("Negative List 2019"), the *Special Administrative Measures (Negative List) for Foreign Investment Access to Pilot Free Trade Zones, 2019 version* ("FTZ Negative List 2019") and the *Catalogue of Industries for Encouraged Foreign Investment, 2019 version* ("Encouraged Catalogue 2019"). All three regulations will enter into effect on 30 July 2019. Simultaneously the *Special Administrative Measures (Negative List) for Foreign Investment Access, 2018 version*, the *Special Administrative Measures (Negative List) for Foreign Investment Access to Pilot Free Trade Zones, 2018 version*, the *Catalogue of Encouraged Foreign Investment Industries in the Catalogue for the Guidance of Foreign Investment Industries (Revised in 2017)*¹ and the *Catalogue of Priority Industries for Foreign Investment in Central and Western China 2017* ("Central and Western China Guideline Catalogue 2017") shall be abolished.

1. Negative List 2019 and FTZ Negative List 2019

Compared to the last versions of the Negative List and FTZ Negative List published in 2018, the Negative List 2019 and FTZ Negative List 2019 further release restrictions in several industry sectors, e.g. transportation, infrastructure, agriculture, mining, manufacturing and culture. Also, the number of sectors in which it is allowed for foreign investors to hold the majority or even all of the shares in a company are increased.

In detail, the length of the Negative List 2019 has been shortened from 48 items to 40 items and the length of the FTZ Negative List 2019 from 45 items to 37 items. The main changes of the Negative Lists 2019 are as below:

- Further expanding the opening of service industry sectors

In the transportation sector, the restriction that the foreign shareholding ratio in domestic shipping agencies shall not exceed 51% has been cancelled.

In the infrastructure sector, the restriction that in city gas, heat supply and water drainage networks for urban population of 500,000 and above, the controlling shares shall be held by the Chinese party has been cancelled.

In the culture sector, the restrictions that the controlling shares of movie theatres and performance managing agencies shall be held by the Chinese party have been cancelled.

In the value-added telecommunication service sector, the restrictions on foreign investment in domestic multi-party communication, store-and-forward business as well as call centers have been cancelled.

- Expanding the access to agriculture, mining and manufacturing industries

In the agriculture sector, the prohibition on foreign investment in the development of wild animal and plant resources has been cancelled.

In the mining sector, the restriction that the investment in exploration and development of oil and natural gas shall be carried out in the form of an equity joint venture or cooperative joint venture and the prohibition on foreign investment in exploration and development of tungsten, molybdenum, tin, antimony and fluorite have been cancelled.

In the manufacturing sector, the prohibitions on foreign investment in manufacture of xuan paper and ink ingot have been cancelled.

- Further using the FTZs as experimental area

Generally, reforms are usually carried out in FTZs first. If they can be successfully implemented in FTZs, they are at a later stage extended to the whole country. The same applies for the industries listed in the Negative Lists. For example, the opening measures for performance managing agencies and the exploration and development of natural gas in the FTZ will now be implemented nationally in 2019. According to the FTZ Negative List 2019, the restrictions on foreign investment in fishing aquatic products, printing of publications, smelting and processing of radioactive minerals, production of nuclear fuel have been cancelled in FTZs. In FTZs, foreign investors can invest in cultural and artistic performance groups with minority shares, while such investment is still prohibited outside of FTZs according to the Negative List 2019. It can be expected that at least some of the reforms implemented now for FTZs may also be implemented on a national level in the next version of the Negative List to be issued in the coming years.

The Negative List 2019 and the FTZ Negative List 2019 also implement some parts of the new *PRC Foreign Investment Law*. China promised national treatment of foreign investments outside the Negative List. According to the Circular on the promulgation of the Negative Lists published by the NDRC on its official website on 30 June 2019, for the sectors not included in the Negative List, management shall be conducted under the principle of consistency for domestic and foreign investment. Further, local authorities shall not impose access restrictions on foreign investment outside the range of the Negative Lists.

2. Encouraged Catalogue 2019

Compared to the Catalogue of Encouraged Foreign Investment Industries in the *Catalogue for the Guidance of Foreign Investment Industries (Revised in 2017)* and the *Central and Western China Guideline Catalogue 2017*, the Encouraged Catalogue 2019 further expands the range of encouraged industries for foreign investment. It encourages foreign investments in modern agriculture, advanced manufacture, high technology, energy conservation and environmental protection as well as modern services.

The main changes of the Encouraged Catalogue 2019 are as follows:

- Further expanding the encouraged category for foreign investment

There are in total 1108 items in the Encouraged Catalogue 2019, of which 415 items are encouraged

nationwide and 693 items are encouraged in Central and Western China. Compared to the Catalogue of Encouraged Foreign Investment Industries in the *Catalogue for the Guidance of Foreign Investment Industries (Revised in 2017)* and the *Central and Western China Guideline Catalogue 2017*, altogether 121 additional items have been included as encouraged areas.

- Further encouraging foreign investment in high-quality development in the manufacturing sector

The following items have been newly added or shifted to the encouraged category:

- (1) In the electronic information sector, 5G core components, etching machines for integrated circuits, chip encapsulation equipment and cloud computing equipment etc.;
- (2) In the equipment manufacturing sector, key parts of industrial robots, new energy automobiles and intelligent automobiles;
- (3) In the modern pharmaceutical sector, key raw material for cell therapy medicine and large-scale cell culture products;
- (4) In the new material industry, new materials for aerospace, monocrystalline silicon and large wafers.

- Further encouraging foreign investment in the service sector

The following items have been newly added or shifted to the encouraged category:

- (1) In the business service sector, engineering consultancy, accounting, tax, inspection and detection services etc.;
- (2) In the commercial circulation sector, cold chain logistics, e-commerce and construction and operation of special railway lines etc.;
- (3) In the technology service sector, artificial intelligence, cleaner production, carbon capture and circular economy.

- Further supporting Western and Central China to obtain foreign investment

Labor-intensive industries, industries which apply advanced technology and supporting facilities have been added into the part of the Encouraged Catalogue 2019 for Western and Central China. The aim is to boost the development of this region.

In summary, the Encouraged Catalogue 2019 and the two new Negative Lists further decrease restrictions and prohibitions for foreign investors in certain industries. The new regulations follow the old pattern which has proven to be very successful for China in the past decades. Encouraged are investments in such industries in which China still hopes to get more technologies, such as robots, intelligent automobiles, etc. While it is understandable and legitimate for each country to have its own industrial policy and strategy, the new regulations still fall short of a complete opening and liberal market access as offered by Western countries for foreign investors. In other words, there is still room for further liberalization in the coming years.

¹ The *Catalogue for the Guidance of Foreign Investment Industries (Revised in 2017)* contains two parts, i.e. the Negative List 2017 version, which has been abolished on 28 July 2018, and the Catalogue of Encouraged Foreign Investment Industries, which will be abolished on 30 July 2019.

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