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# CHINA: CHINA FURTHER OPENS DOOR FOR FOREIGN INVESTORS IN MANY INDUSTRIES



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The laws and regulations governing the foreign direct investment regime in China are a tool for steering foreign investments. Based on China's WTO commitments and policy considerations, the laws and regulations and also their interpretation and practical application are subject to change over time. The main tool for this policy-based steering of foreign investment is the so-called "Industrial Guidance Catalogue for Foreign Investment" ("**Catalogue**"), which classifies industry sectors into different categories. Whether or not a particular sector is open to foreign investment depends on how it is categorised. The latest version of such Catalogue was jointly issued by the National Development and Reform Commission ("**NDRC**") and the Ministry of Commerce ("**MOFCOM**") and took effect on 28 July 2017 ("**2017 Catalogue**"). In the 2017 Catalogue, industry sectors are divided into two categories, namely the "encouraged" projects and projects falling under the regime of the "Special Management Measures for the Market Entry of Foreign Investment" ("**Negative List**"), with such Negative List containing two separate subsections of restricted projects and prohibited projects. Industry sectors not mentioned in the encouraged category or in the Negative List are considered permitted for foreign investment. The Negative List also helps foreign investors to determine whether an investment project is subject to the traditional MOFCOM examination and approval procedure (projects within such list), or is instead "only" governed by the simplified record-filing regime.

## 1. Introduction of the 2018 Negative List

On 28 June 2018, NDRC and MOFCOM jointly released the "Special Management Measures for the Market Entry of Foreign Investment (Negative List 2018 Version)" ("**2018 Negative List**") to the Catalogue with such list becoming effective on 28 July 2018 and replacing the previous Negative List under the 2017 Catalogue, whereby the "encouraged" categories in the 2017 Catalogue remain untouched.

The 2018 Negative List further loosens restrictions on the market access for foreign investment in line with the basic principle of further market opening focusing mainly on the industries of finance, automotive, transportation, manufacture, professional services, infrastructure, energy, resources, agriculture, etc. The list of industries, for which foreign investment requires MOFCOM examination and approval procedure has been further shortened.

Further, the 2018 Negative List adopts a brand new format by abandoning the long-standing classification of restricted categories and prohibited categories and combining such categories into one unified form which is classified only by industry sectors redefined according to the National Economic Industry Classification 2017 (GB/T 4754 2017). The clearer classification and integration of the industries make it more convenient for foreign investors to search the industries they intend to invest in.

Another highlight of the 2018 Negative List is that it is no longer a static list but contains a timeline of gradual market opening for foreign investment for certain industries, e.g. for automotive manufacture (see below section II). This further indicates China's determination and commitment to promote the economic globalisation and relax market access for foreign investment.

## 2. Environmental Approvals and Licenses

Under the 2018 Negative List, government control over market entry of foreign investment has been substantially loosened and new opening measures have been implemented in the following industries:

### **AGRICULTURE**

- Cancelling foreign investment restrictions on crop seed production except for wheat and corn.

### **MINING**

- Cancelling the restrictions for foreign investment in the exploration and mining of special and rare kinds of coal and graphite.

### **MANUFACTURE**

- Cancelling the ban on manufacture of weapons and ammunition.
- Cancelling the restriction that smelting and separation of rare earth must be operated by Sino-foreign equity/cooperative joint ventures, and cancelling the restrictions on smelting of tungsten.
- Cancelling the restriction that manufacture of whole special use vehicles and new-energy vehicles must be operated by enterprises in which Chinese parties hold at least 50 % of the shares, effective as of 2018; cancelling the same restriction for manufacture of other types of automobile whole commercial vehicles effective as of 2020; cancelling the restriction on manufacture of whole passenger vehicles in 2022 and the restriction that one foreign investor may establish no more than two Sino-foreign joint ventures in the production of the same category of whole vehicle products.
- Cancelling the restriction that design, manufacture and repair of vessels (including sections) must be operated by companies where Chinese parties are the controlling shareholders.

- Cancelling the restriction that design, manufacture and maintenance of aircrafts for trunk lines, regional aircrafts, design and manufacture of helicopters of three tons or more, manufacture of ground-effect and water-effect aircrafts, and design and manufacturing of UAV and aerostats must be operated by companies where Chinese parties are the controlling shareholders.
- Cancelling the restriction that design, manufacture and maintenance of general aircrafts must be operated by Sino-foreign equity/cooperative joint ventures.

## **PRODUCTION AND SUPPLY OF ELECTRICITY, HEAT, GAS AND WATER**

- Cancelling the restriction that construction and operation of power grids must be operated by companies where Chinese parties are the controlling shareholders

## **WHOLESALE AND RETAIL**

- Cancelling the restriction on purchase and wholesale of rice, wheat, corn.
- Cancelling the restriction on construction and operation of gas stations.

## **TRAFFIC AND TRANSPORTATION, WAREHOUSING AND POST**

- Cancelling the restriction that construction and operation of network of trunk railway lines must be operated by companies where Chinese parties are the controlling shareholders.
- Cancelling the restriction that railway passenger transport companies must be operated by companies where Chinese parties are the controlling shareholders.
- Cancelling the restriction that international marine transportation companies must be operated by Sino-foreign equity/cooperative joint ventures.
- Cancelling the restriction that international vessel agencies must be operated by companies where Chinese parties are the controlling shareholders. Restrictions on domestic vessel agencies remain unchanged.

## **INFORMATION TRANSMISSION, SOFTWARE AND INFORMATION TECHNOLOGY SERVICES**

- Cancelling the prohibition on foreign investment in business premises for Internet access services (prohibition on foreign investment in Internet news information services, online publication services, online audio and video program streaming services, Internet cultural business (excluding music) and Internet public information release services remain unchanged, excluding services committed by China's WTO accession).

## **FINANCE**

- Foreign investment in securities companies and securities investment fund management companies, future companies and life insurance companies with foreign shareholdings of no more than 51 % is permitted and such restriction will be eliminated in 2021.
- Cancelling the restrictions on foreign investment in banks.

## **LEASING AND COMMERCIAL SERVICES**

- Foreign investment in consulting on Chinese legal affairs (excluding the provision of information on the environmental impact of Chinese laws) remains prohibited with an additional ban for foreign investment in domestic law firms.

## **SCIENTIFIC RESEARCH AND TECHNICAL SERVICES**

- Cancelling the restriction on foreign investment in surveying and mapping companies.

## **EDUCATION**

- Foreign investments in compulsory education institutions remain prohibited with an additional ban for foreign investment in religious education institutions.

## **CULTURE, SPORT AND ENTERTAINMENT**

- Foreign investments in editing and publishing of books, newspapers, and periodicals, and foreign investments in editing, publishing and production of audio-visual products and electronic publications remain prohibited, additional bans on foreign investment in production of books, newspapers and periodicals have been added.
- Cancelling the restriction for foreign investment in the production of radio and television programs and movies.
- Foreign investments in movie production companies, distribution companies and cinema companies remain prohibited. An additional ban on foreign investment in movie introduction businesses has been added.
- Foreign Investments in auction houses and cultural relics shops engaging in the auction of cultural relics remain prohibited. An additional ban on foreign investment in state-owned cultural relics museums has been added.
- An additional ban on foreign investment in performing groups of artist program has been added.

### 3. Pilot Free Trade Zones

In addition to the newly introduced 2018 Negative List applicable nationwide, NDRC and MOFCOM have also jointly issued the “Special Management Measures for the Market Entry of Foreign Investment in Pilot Free Trade Zones (Negative List 2018 Version)” (“**2018 Negative List for PFTZ**”) on the same day with such list only applicable to pilot free trade zone established in China, e.g. the free trade zones in Shanghai, Guangdong, Tianjin, Fujian, Liaoning, Zhejiang, Henan, Hubei, Chongqing, Sichuan, Shanxi and Hainan. The 2018 Negative List for PFTZ adapts the same format and regime as the national 2018 Negative List, however, with a higher level of market opening for foreign investments only in certain industries such as seed industry (selection and breeding of new wheat and corn varieties, as well as the production of seeds), exploitation of oil and natural gas, nuclear fuel and nuclear radiation processing industry, culture and entertainment, etc.



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