

## National Development and Reform Commission and Ministry of Commerce Issue the 2019 Foreign Investment Negative List

China Business Solution Office  
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On June 30, 2019, the National Development and Reform Commission and the Ministry of Commerce issued the Special Administrative Measures on Access to Foreign Investment (Negative List, 2019 version) (Order No. 25, hereinafter the “2019 National Negative List”) and the Free Trade Zone Special Administrative Measures on Access to Foreign Investment (2019 version) (Order No. 26, hereinafter the “2019 FTZ Negative List”), shortening the 2018 lists and further easing restrictions on participation by foreign investors. The 2019 National Negative List and the 2019 FTZ Negative List will replace their respective 2018 versions and take effect on July 30, 2019.

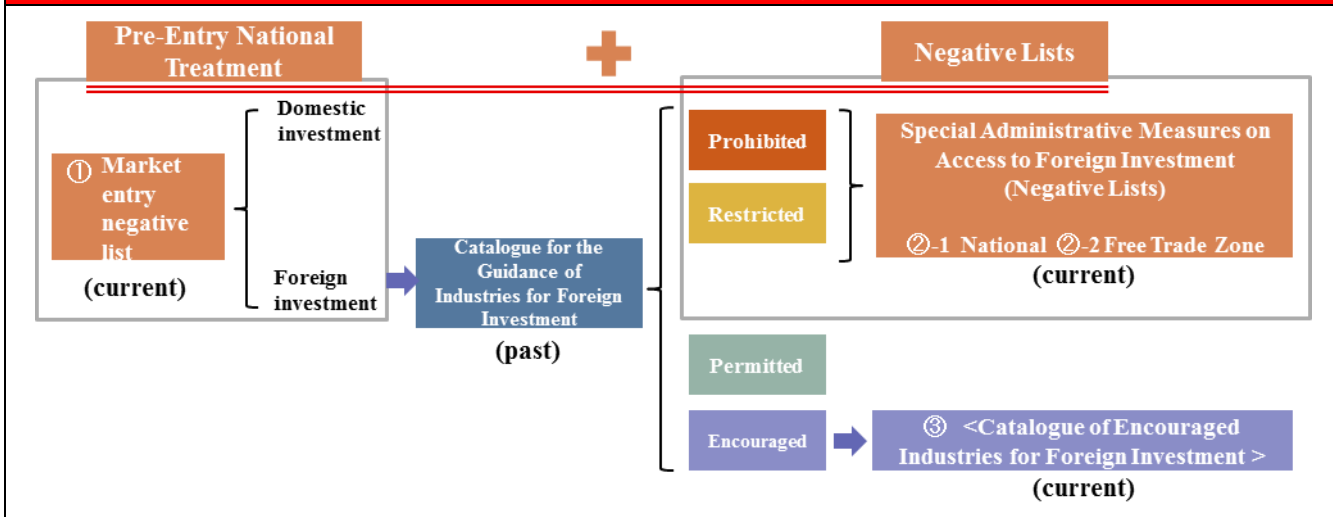
### 1. Background on Policy

The lists aim to manage pre-entry national treatment and negative lists (for foreign investment) for investments made by foreign investors (hereinafter, “foreign investment”) based on the Foreign Investment Law that went into effect in March 2019. Pre-entry national treatment refers to treating foreign investment in the entry phase equally with domestic investments. In other words, the negative list for market entry will be applied equally to both domestic and foreign investment. Meanwhile, the negative lists for foreign investment implement special administrative measures on access to foreign investment in specific areas, and hence the National and FTZ Negative Lists will be applied.

To attract foreign investment, China has been issuing the Catalogue for the Guidance of Industries for Foreign Investment since June 1995, in which industries for foreign investment are classified into prohibited, restricted, and encouraged categories (all others are classified as permitted). Foreign investors are not allowed to invest in industries in the prohibited category. For industries in the restricted category, investment cannot be made without the screening and approval of the authorities, or they may only be made using the entry method or under conditions prescribed by the authorities. Preferential policies will be offered for those in the encouraged category. Foreign investment in industries in the permitted category may be made according to the law and on an equal basis with domestic investment.

Since September 2013, China has managed foreign investment with pre-entry national treatment and negative lists, beginning in the Shanghai Pilot Free Trade Zone, and integrated the prohibited and restricted industries with the negative list (the initial free trade zone foreign investment negative list). In accordance with trials conducted in free trade zones, the prohibited and restricted categories in the Catalogue for the Guidance of Industries for Foreign Investment announced in June 2017 were also unified with the negative list (the initial national foreign investment negative list).

**[Fig.1] Pre-Entry National Treatment and Negative List Management of Foreign Investment**



The 2019 National Negative List and the 2019 FTZ Negative List issued simultaneously this year both reduced restrictions on industries compared to the 2018 versions. In accordance with the principle of free trade zone trials taking place first, the 2019 FTZ Negative List is even more open.

In light of the above, foreign investors who are considering investing in China must reference the regulations in the order they are listed below.

- ① Negative list for market entry (National Development and Reform Commission Department of Economic System Reform [2018] No.1892)
- ② ②-1 2019 national negative list for foreign investment or ②-2 2019 FTZ negative list for foreign investment
- ③ Catalogue of Encouraged Industries for Foreign Investment (2019 version) (National Development and Reform Commission and Ministry of Commerce 2019 Announcement No. 27)

**2. Main Contents of the Regulations**

Negative lists are not added to and only subtracted from, based on the consent of the Chinese government.

There are a total of 40 items on the 2019 National Negative List, which deleted eight items and amended 11 (four related to the mining industry, one for the manufacturing industry, five for the service industry, and one for the agriculture industry) from the 2018 version.

**[Fig. 2] Comparison of 2018 and 2019 National Negative Lists**

No	Industry	2018 version	2019 version	Changes
1	Mining	5. The exploration and development of oil and natural gas (including coalbed gas but excluding oil shale, oil sands, shale gas, etc.) shall be limited to joint ventures and cooperation.	-	Removed
2		6. Foreign investment in the exploration and mining of tungsten, molybdenum, tin, antimony, and fluorite shall be prohibited.	5. Foreign investment in the exploration, mining, and mineral processing of rare earth, radioactive minerals, and tungsten shall be prohibited.	Integrated
3		7. Foreign investment in the exploration, mining, and mineral processing of rare earth shall be prohibited.		
4		8. Foreign investment in the exploration,		

		mining, and mineral processing of radioactive minerals shall be prohibited.		
5	Manufacturing	14. Foreign investment in the production of Xuan paper and inksticks shall be prohibited.	-	Removed
6	Production and supply of electricity, heat, gas, and water (service)	16. In cities with a population of more than 500,000, the construction and operation of gas, heat, and water supply and drainage networks shall be majority controlled by the Chinese side.	12. In cities with a population of more than 500,000, the construction and operation of water supply and drainage networks shall be majority controlled by the Chinese side.	Modified
7	Transportation (service)	19. Domestic shipping agencies shall be majority controlled by the Chinese side.	-	Removed
8	Value-added telecommunications (service)	25. For telecommunication companies: Limited to the telecommunication services opened up per China's WTO commitments, the foreign share of value-added telecommunication services shall not exceed 50% (except for e-commerce businesses), and basic telecommunication services shall be majority controlled by the Chinese side.	20. For telecommunication companies: Limited to the telecommunication services opened up per China's WTO commitments, the foreign share of value-added telecommunication services shall not exceed 50% (except for e-commerce, multi-party communication, store-and-forward, and call center businesses), and basic telecommunication services shall be majority controlled by the Chinese side.	Expanded
9	Agriculture	36. Foreign investment in the development of nationally protected wildlife resources originating in China shall be prohibited.	-	Removed
10	Culture (service)	44. The construction of movie theaters shall be controlled by the Chinese side.	-	Removed
11		47. Agencies brokering performances shall be majority controlled by the Chinese side.	-	Removed

The 2019 FTZ Negative List contains of a total of 37 items, including 8 deletions and 11 amendments to the 2018 version (two items related to the agriculture industry, three for mining, two for manufacturing, and four for service).

Compared to the National Negative List, the 2019 FTZ Negative List further opens up categories including (1) fishing, (2) printing, and (3) the development of wildlife resources originating in China.

[Fig. 3] Comparison of 2018 and 2019 FTZ Negative Lists

No	Industry	2018 version	2019 version	Changes
1	Agriculture	4. Foreign investment in fishing of aquatic products in sea areas under China's jurisdiction and inland bodies of water shall be prohibited.	-	Removed
2	Mining	5. Foreign investment in the exploration and mining of tungsten, <b><u>molybdenum, tin, antimony, and fluorite</u></b> shall be prohibited.	4. Foreign investment in the exploration, mining, and mineral processing of rare earth, radioactive minerals, and tungsten shall be prohibited. (Access to rare earth mining areas or acquisition of geological data, ore samples and production technology are prohibited without permission.)	Integrated
3		6. Foreign investment in the exploration, mining, and mineral processing of rare earth shall be prohibited. (Access to rare earth mining areas or acquisition of geological data, ore samples and production technology are prohibited without permission.)		
4		7. Foreign investment in the exploration, mining, and mineral processing of radioactive minerals shall be prohibited.		
5	Manufacturing	8. The printing of publications must be majority controlled by the Chinese side	-	Removed
6		12. Foreign investment in the production of Xuan paper and inksticks shall be prohibited.	-	Removed
7	Production and supply of electricity, heat, gas, and water (service)	14. In cities with a population of more than 500,000, the construction and operation of <b><u>gas, heat,</u></b> and water supply and drainage networks shall be majority controlled by the Chinese side.	9. In cities with a population of more than 500,000, the construction and operation of water supply and drainage networks shall be majority controlled by the Chinese side.	Modified
8	Transportation (service)	17. Domestic shipping agencies shall be majority controlled by the Chinese side.	-	Removed
9	Value-added telecommunications (service)	23. For telecommunication companies: Limited to the telecommunication services opened up per China's WTO commitments, the foreign share of value-added telecommunication services shall not exceed 50% (except for e-commerce businesses), and basic telecommunication services shall be majority controlled by the Chinese side	17. For telecommunication companies: Limited to the telecommunication services opened up per China's WTO commitments, the foreign share of value-added telecommunication services shall not exceed 50% (except for e-commerce business, <b><u>multi-party communication,</u></b>	Expanded

		(and the operator shall be a public company specializing in basic telecommunication business established according to law). The pilot policy for the original area of the Shanghai FTZ (28.8 square kilometers) has been extended to all FTZ pilot areas.	<u>store-and-forward, and call center businesses</u> ), and basic telecommunication services shall be majority controlled by the Chinese side (and the operator shall be a public company specializing in basic telecommunication business established according to law). The pilot policy for the original area of the Shanghai FTZ (28.8 square kilometers) has been extended to all FTZ pilot areas.	
10	Agriculture	34. Foreign investment in the development of nationally protected wildlife resources originating in China shall be prohibited.	-	Removed
11	Culture (service)	42. The construction of movie theaters shall be controlled by the Chinese side. (For foreign films, the broadcast time must fit into the ratio allotted by the government for international and imported films. The broadcast time of domestic films must not fall below 2/3 of the total annual broadcast time.	-	Removed

Furthermore, at the opening ceremony of the 13th summer Davos Forum held on July 2, 2019, Premier of the State Council Li Keqiang announced that China would move up the removal of restrictions on foreign ownership of securities, futures, and life insurance outlined in the negative lists from 2021 to 2020 in order to expand the opening up of the financial industry.

### 3. Impact on Companies

At a press conference on June 2019, a spokesperson for the National Development and Reform Commission said that restrictive measures other than those on the foreign entry negative lists will be completely eliminated by the end of 2019 and that the government will ensure the consistency of domestic and foreign investment standards for market entry. The lists issued have created a more open and friendly investment environment as well as greater opportunities.

We will continue to follow up on related information and release further updates.

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