

## Restrictions on Foreign Investment to be Eased and Clarified

16 DEC 2016

DYLAN CHEN

BUSINESS DEVELOPMENT OFFICE  
HONG KONG BRANCH

T +852-2821-3782

E DYLAN\_Y\_CHEN@HK.MUFG.JP

**The Bank of Tokyo-Mitsubishi UFJ, Ltd.**  
A member of MUFG, a global financial group

On 7 December 2016, the National Development and Reform Commission ("NDRC") and the Ministry of Commerce of the People's Republic of China ("MOFCOM") jointly issued a draft of the "Catalogue for the Guidance of Foreign Investment in Industries" (hereinafter the "Catalogue") for public comment (hereinafter the "New Catalogue")<sup>1</sup>. The "Negative List", listing all the special administration measures on market entry as the nationwide guidance for foreign investment, is considered to be the most important content of the New Catalogue. Moreover, the number of restrictive industries of foreign investment has been reduced.

### BACKGROUND

Since the first launch in 1995, the Catalogue has been amended every 3 or 4 years based on the economic development and investment environment in order to adjust the direction of foreign investment in industries. The New Catalogue, which is expected to be officially released in the first quarter of 2017, will be its 7th amendment.

The current effective Catalogue is the "Catalogue for the Guidance of Foreign Investment in Industries (Amended in 2015)" (hereinafter the "2015 Catalogue")<sup>2</sup>. Same as the earlier versions, the 2015 Catalogue includes 3 parts, listing the encouraged sector, restricted sector and prohibited sector for foreign investment in industries respectively. Previously, before tapping into the Chinese market, foreign-invested enterprises (hereinafter the "FIEs") should refer to the Catalogue to determine if the industries are encouraged, restricted or prohibited by the Chinese government.

Piloted in Shanghai since October 2013 and then the other 3 Free Trade Zones (together, the "FTZs") since April 2015, FIEs located in these 4 FTZs have become subject to the "Negative List Regime". A "Negative List" has been introduced, listing the restricted or prohibited industries for foreign investments in the FTZs. FIEs can invest in any sector not on the list without prior approval from the authorities. Establishment or changes of the eligible FIEs in the FTZs can be conducted simply by record-filing. According to the new rules on foreign investment, such Negative List Regime has been expanded and implemented in the whole country since October this year<sup>3</sup>.

<sup>1</sup> NDRC & MOFCOM (7 Dec 2016). Retrieved from: [http://www.ndrc.gov.cn/yjzx/yjzx\\_add.jsp?SiteId=122](http://www.ndrc.gov.cn/yjzx/yjzx_add.jsp?SiteId=122)

<sup>2</sup> NDRC & MOFCOM (10 Mar 2015). No.22 Order of NDRC & MOFCOM, 2015. Retrieved from: [http://www.fdi.gov.cn/1800000121\\_39\\_4830\\_0\\_7.html](http://www.fdi.gov.cn/1800000121_39_4830_0_7.html)

<sup>3</sup> Details could be referred to News Focus No.13 2016 published by BTMU, Hong Kong Branch. [http://rmb.bk.mufg.jp/files/topics/385\\_ext\\_02\\_en\\_0.pdf](http://rmb.bk.mufg.jp/files/topics/385_ext_02_en_0.pdf)

However, the nationwide Negative List is not yet released, although the announcement<sup>4</sup> jointly made by the NDRC and MOFCOM in October 2016 states that the Negative List should be executed with reference to the 2015 Catalogue, including items under i) the encouraged sector with specific requirements on shareholding, ii) the restricted sector as well as iii) the prohibited sector. The New Catalogue is thus issued in order to give a clearer guidance.

## HIGHLIGHTS

### Structural Change of the Catalogue

Restructuring of the Catalogue is considered the biggest amendment. Under the New Catalogue, industries will be categorised into 2 parts, including the encouraged sector and the Negative List, instead of the existing 3 sectors.

In line with the announcement regarding the Negative List, items under i) the encouraged sector with specific requirements on shareholding, ii) the restricted sector as well as iii) the prohibited sector have been combined and all clearly stated in the Negative List.

2015 Catalogue		New Catalogue
i) Encouraged sector	➔	i) Encouraged sector
ii) Restricted sector		<b>ii) Negative List</b>
iii) Prohibited sector		➤ Encouraged sector with specific requirements on shareholding ➤ Restricted sector ➤ Prohibited sector

- Foreign investors are not allowed to engage in the prohibited sector on the Negative List.
- For restricted sector with shareholding requirements, establishment of the foreign-funded partnership enterprise<sup>5</sup> is not allowed.
- Some specific items previously under the restricted sector and prohibited sector will be governed by the same rules as those of the domestic enterprises', and therefore excluded from the Negative List.

### Fewer Restrictive Industries

The number of restrictive industries of foreign investment has been sharply reduced from 93 items in the 2015 Catalogue to 62 items.

(Unit: Number of items)

Restrictive Industries	2015 Catalogue	New Catalogue
Encouraged sector with specific requirements on shareholding	19	0
Restricted sector	38	35
Prohibited sector	36	27
<b>TOTAL</b>	<b>93</b>	<b>62</b>

Specifically, restrictions have been eased in the following industries:

- Manufacturing Industry: Railway transport equipment, automotive electronics and new energy automotive batteries, motorcycles, edible oils and fats, corn deep-processing, fuel ethanol, etc.

<sup>4</sup> NDRC & MOFCOM (8 Oct 2016). No.22 Order of NDRC & MOFCOM, 2016. Retrieved from: <http://www.mofcom.gov.cn/article/h/zongzhi/201610/20161001405285.shtml>

<sup>5</sup> A "Foreign-funded partnership enterprise" refers to a partnership enterprise established in China i) by at least 2 foreign enterprises/individuals, or ii) by a foreign enterprise/individual and a Chinese natural person/legal person/other organisation.

- Service Industry: Highway passenger transport, ocean shipping tally, credit investigation and rating services, etc.
- Mining Industry: Unconventional oil and gas, precious metals and lithium minerals, etc.

## COMMENTS

It is expected that the Negative List in the New Catalogue, to be released soon, will give a clear guidance for foreign investment on a national scale. Moreover, with the aim to promote higher level of opening, it is believed that the New Catalogue will further facilitate construction of a better business environment and make better use of foreign investment in China's economic development, industrial transformation, as well as reform and innovation. We will keep an eye on the easing of restrictions on foreign investment and issue detailed report once the finalised version of the New Catalogue is officially released.

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