

New FTZ and Nationwide Negative Lists for Foreign Investment Access

7 JUL 2017

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New Negative Lists apply to China's Free Trade Zones (hereinafter the "FTZs") and the whole country, were issued on 16 and 28 June 2017 respectively. According to the Negative Lists which list all the special administration measures on market entry for foreign investment, restrictions on several specific industries have been eased. It is also worth noticing that the Nationwide Negative List released this time, is the very first time to give a nationwide guidance on foreign investment access, with the aims of further opening up to encourage foreign investment.

BACKGROUND

The Negative List, listing the restricted and prohibited industries for foreign investment, has nearly a 4-year history since its first launch in the Shanghai FTZ. Foreign investment in the industries on the Negative List will be subject to government approvals. In contrast, for industries not on the Negative List, foreign investors will receive equal treatment as the domestic companies. Moreover, establishment or changes of the eligible foreign invested enterprises can be conducted simply by record-filing. Since October 2016, such Negative List Regime has been expanded and implemented in the whole country¹, and a draft of the Nationwide Negative List was issued for public comments² accordingly two months later.

According to the "Circular of Several Measures for Expansion of Opening-up and Active Use of Foreign Investment" (Guofa [2017] No.5)³ released in January this year, further relaxation of the foreign investment access, especially in the service, manufacturing and mining industries, is required. In respond to the circular, new FTZ and Nationwide Negative Lists were released in June.

HIGHLIGHTS

The FTZ Negative List is categorised into 15 industries, 40 categories and 95 items. Meanwhile, the Nationwide Negative List is categorised into restricted sector and prohibited sector, including 35 and 28 items respectively.

Number of items of the FTZ Negative List seems to be more as it is stated more explicit and detailed. Basically, higher level of opening is applied to the FTZ Negative List than the Nationwide Negative List.

¹ 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

² Details could be referred to News Focus No.19 2016 published by BTMU, Hong Kong Branch.
http://rmb.bk.mufg.jp/files/topics/453_ext_02_en_0.pdf

³ The State Council (17 Jan 2017). Retrieved from: http://www.gov.cn/zhengce/content/2017-01/17/content_5160624.htm

I. FTZ Negative List

The State Council released the new FTZ Negative List⁴ for the 11 FTZs on 16 June 2017, which will come into effect on July 10.

Compared to the previous version, the 2017 FTZ Negative List removes 10 categories and 27 items of restrictions on foreign investment, bringing the number of items down to 95 (2013 Shanghai FTZ Negative List: 190 items). To be specific, restrictions have been eased in the following industries:

- Mining: Precious metals and lithium minerals.
- Manufacturing: Aviation, ship, automobile, railway transport equipment, telecommunication equipment, mineral, pharmaceuticals.
- Transportation: Road and water transport.
- Information Technology: Internet and related services.
- Financial Services: Banking services (government bonds, RMB businesses, asset management) and insurance (reinsurance).
- Commercial Services: Accounting and auditing, statistics and survey, etc.
- Education: Special education institutions related to military, police, politics, etc.
- Culture: Cultural products import, theme park, etc.

Investors from Hong Kong, Macau and Taiwan should abide by FTZ Negative List where appropriate, unless CEPA, ECFA, or other free trade agreement is applicable and more beneficial.

II. Nationwide Negative List

Along with the issuance of the "Catalogue for the Guidance of Foreign Investment Industries (2017)" (hereinafter the "2017 Catalogue")⁵, the first nationwide Negative List was officially published on 28 June 2017, and will take effect from 28 July.

Compared to the previous version, encouraged sector with specific requirements on shareholding, restricted sector as well as prohibited sector have been combined into the Negative List. However, restrictive measures which will be governed by the same rules as those of the domestic enterprises' will be excluded from the Negative List (e.g. construction and operation of the theme park).

The 2017 Catalogue reduces the number of restrictive industries of foreign investment from 93 items in the previous version to 63 items. Among which, items under encouraged sector with specific requirements on shareholding were lessened from 19 to 0, restricted sector from 38 to 35, and prohibited sector from 36 to 28. The following markets have been further opened:

- Service: Highway passenger transport, ocean shipping tally, credit investigation and rating services, accounting and auditing, etc.
- Manufacturing: Railway transport equipment, automotive electronics and new energy automotive batteries, motorcycles, edible oils and fats, corn deep-processing, fuel ethanol, etc.
- Mining: Unconventional oil and gas, precious metals and lithium minerals, etc.

Attention should be paid that, for restricted sector with shareholding requirements, establishment of the foreign-funded partnership enterprise⁶ is not allowed.

⁴ The State Council (16 Jun 2017). Special Administrative Measures for Foreign Investment Access in the Free Trade Zones (Negative List) (2017). (Guobanfa [2017] No.51). Retrieved from: http://www.gov.cn/zhengce/content/2017-06/16/content_5202973.htm

⁵ NDRC & MOFCOM (28 Jun 2017). Retrieved from: http://www.gov.cn/xinwen/2017-06/28/content_5206424.htm

⁶ 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.

Related: 2017 Catalogue and Its Encouraged Sector

By combining the restrictive measures for foreign investment access to the Negative List, the 2017 Catalogue was restructured to “encouraged sector + Negative List”. Foreign investors are encouraged to invest in the field of advanced manufacturing, high-tech and modern service industries, which are in line with the “Made in China 2025” and the industrial transformation and upgrading plans. Items newly added to the encouraged sector in the 2017 Catalogue include virtual reality (VR) and augmented reality (AR), 3D printing, etc.

COMMENTS

Update of the FTZ Negative List and the first launch of the Nationwide Negative List offer new opportunities for foreign investment. Relaxation of restrictions makes more markets opened for easier foreign investment access. Higher level of opening is expected to further facilitate construction of a better business environment, and make better use of foreign investment in development of China's real economy.

Meanwhile, in order to give an explicit guidance on the record-filing procedures for foreign investors not subject to the Negative List, a draft of the “Administrative Measures for Record-filing of the Establishment and Change of Foreign-invested Enterprises”⁷ was issued by MOFCOM for public comments in May 2017. It is expected that promulgation of the final version, together with the new Negative Lists, will encourage more foreign investment and further lead to economic liberalization, technological revolution, industrial upgrading, as well as reform and innovation.

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⁷ MOFCOM (26 May 2017). Retrieved from: <http://tfs.mofcom.gov.cn/article/as/201705/20170502582832.shtml>