

China Further Relaxes Foreign Investment in Nationwide and FTZ

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Respectively on 28th and 30th June 2018, the National Development and Reform Commission (hereinafter "NDRC") and the Ministry of Commerce (hereinafter "MOC") jointly promulgated "the Circular on foreign investment negative list of nationwide"¹ (NDRC, MOC [2018] No.18, hereinafter "nationwide negative list") and "the Circular on foreign investment negative list of Free Trade Zone"² (NDRC, MOC [2018] No.19, hereinafter "FTZ negative list"), fulfilling its promise to further open up domestic market to foreign investment. The nationwide negative list and FTZ negative list will correspondingly take effect from 28th and 30th July 2018.

BACKGROUND

Performing as a form of list with corresponding measures, negative list management is a mechanism that categorizes different industries, sectors, businesses prohibited and restricted from foreign investment. Foreign investment negative list acts as a special management regarding market access and applies to foreign investors who invest business in China.

In 2013, the foreign investment negative list management initially commenced in Shanghai FTZ, with 190 special measures. Since then the negative list experienced upgrade and cut to 95 measures in 2017. With the release of "Catalogue of Industries for Guiding Foreign Investment (Revision 2017)"³, the nationwide negative list gave the first appearance, which consolidates items in restricted, prohibited sector and items in encouraged sector with shareholding limit and senior management requirement.

Under the new model of negative list management, China has seen a tremendous change in foreign investment approval system, which means that foreign investments beyond negative list are subject to record-filing management instead of approval.

With an aim of further opening up and attract foreign investment, new negative list for nationwide and FTZ have been released at the end of June. At the same time, both foreign investment negative list in "Catalogue of Industries for Guiding Foreign Investment (Revision 2017)" and "Foreign Investment Negative List in FTZ (2017 Version)"⁴ shall be abolished.

HIGHLIGHTS

I. Main Contents of Nationwide Negative List (Revision 2018)

¹ NDRC, MOC (28 Jun 2018). Retrieved from: <http://www.ndrc.gov.cn/zcfb/zcfbl/201806/W020180628640822720353.pdf>

² NDRC, MOC (30 Jun 2018). Retrieved from: <http://www.ndrc.gov.cn/zcfb/zcfbl/201806/W020180628649433532826.pdf>

³ NDRC, MOC (28 Jun 2017). Retrieved from: <http://www.ndrc.gov.cn/zcfb/zcfbl/201706/W020170628553266458339.pdf>

⁴ The State Council (16 Jun 2017). Retrieved from: http://www.gov.cn/zhengqce/content/2017-06/16/content_5202973.htm

Nationwide negative list relaxes market access in 22 sectors including finance, transportation, manufacturing and so on, cutting the number of measures to 48 from 63.

【Table 1】 Measures on Nationwide Negative List (Revision 2018)(Abstract)

| Field | Sector | Measure |
|------------------------|--------------------|--|
| Service | Finance | <ul style="list-style-type: none"> ✓ The foreign shareholding limit on banking industry shall be cancelled ✓ The foreign shareholding limit on securities, fund management and futures, life insurance companies shall be loosened to 51% ✓ The foreign shareholding limit for above shall be cancelled in 2021 |
| | Infrastructure | <ul style="list-style-type: none"> ✓ The foreign shareholding limit on railway network, power grid shall be cancelled |
| | Transportation | <ul style="list-style-type: none"> ✓ The foreign shareholding limit on highway passenger transport, international shipping and international shipping agency shall be cancelled |
| | Commerce and trade | <ul style="list-style-type: none"> ✓ The foreign shareholding limit on gas station, procurement and wholesale of grain shall be cancelled |
| | Culture | <ul style="list-style-type: none"> ✓ The restriction on investment of internet service bar shall be cancelled |
| Manufacturing | Automobile | <ul style="list-style-type: none"> ✓ The foreign shareholding limit on special purpose motor vehicle, new-energy vehicle manufacturing shall be cancelled ✓ The foreign shareholding limit on commercial vehicle manufacturing shall be cancelled in 2020 ✓ Both the foreign shareholding limit on passenger vehicle manufacturing and the restriction that a single foreign investor can only set up no more than two joint ventures in China shall be cancelled in 2022 |
| | Vessel | <ul style="list-style-type: none"> ✓ The foreign shareholding limit on vessel design, manufacturing and repair shall be cancelled |
| | Aircraft | <ul style="list-style-type: none"> ✓ The foreign shareholding limit on aircraft used for trunk lines and regional lines, general aircraft, helicopter, unmanned aerial vehicle, aerostat and so on shall be cancelled |
| Agriculture and Energy | Agriculture | <ul style="list-style-type: none"> ✓ The foreign shareholding limit on production of crop seeds expect for corn and wheat shall be cancelled |
| | Energy | <ul style="list-style-type: none"> ✓ The foreign shareholding limit on special rare coal mining shall be cancelled |
| | Resource | <ul style="list-style-type: none"> ✓ The foreign shareholding limit on graphite exploration, rare earth smelting and separation, tungsten smelting shall be cancelled |

Meanwhile with the commencement of the nationwide negative list (Revision 2018), the catalogue of encouraged industries for foreign investment in “Catalogue of Industries for Guiding Foreign Investment (Revision 2017)” shall continue to function.

II. Main Contents of FTZ Negative List (Revision 2018)

On the other hand, FTZ negative list cuts the number of measures to 45 from 95 in 2017 Version.

【Table 2】 Measures on FTZ negative list (Revision 2018)(Abstract)

| Field | Sector | Measure |
|-------------|---|--|
| Agriculture | Seed industry | <ul style="list-style-type: none"> ✓ The foreign shareholding limit on seed selection and production for new varieties of wheat and corn shall be loosened from 49% to 66% |
| Mining | Exploration and mining of oil and natural gas | <ul style="list-style-type: none"> ✓ The restriction that exploration and mining of oil and natural gas shall be limited to equity joint ventures or cooperative joint ventures, shall be removed ✓ The prohibition of investment in refining and processing of radioactive mineral products, production of nuclear fuel, shall be cancelled |

| | | |
|----------------------------------|---------|---|
| Culture sports and entertainment | Culture | <ul style="list-style-type: none"> ✓ The foreign shareholding limit on performance agency institutions shall be cancelled ✓ The prohibition of investment in art performance groups shall be cancelled but under Chinese majority ownership |
|----------------------------------|---------|---|

III. Comparison between Negative List for Nationwide and FTZ

Nationwide negative list (Revision 2018) for the first time gives appearance in a form of table and categorizes according to "Industrial Classification for National Economic Activities" (GB/T 4754—2017), which aligns itself to FTZ negative list in terms of format. By context, nationwide negative list applies the replicable experience from FTZ in recent years and broadly loosens the market access compared with that of 2017 version. On the other hand, FTZ negative list removes and eases more restrictions in wider fields, moving one step forward than nationwide one.

Regarding the number of measures, 29 appear the same in both lists and 14 perform basically same while the FTZ list is more elaborative than nationwide one in contents. Moreover, in terms of foreign shareholding ratio, 2 measures are different between two lists. And only 3 measures are limited to the nationwide version.

【Table 3】 Comparison between Negative List for Nationwide and FTZ (2018) (Abstract)

| Field | Sector | Nationwide | FTZ |
|----------------------------------|--|--|---|
| Agriculture | Seed industry | ✓ For seed selection and production for new varieties of wheat and corn, it shall be under Chinese majority ownership | ✓ For seed selection and production for new varieties of wheat and corn, China side shall own no less than 34% stake |
| Mining | Exploration and mining of oil and natural gas | ✓ Exploration and mining of oil and natural gas shall be limited to equity joint ventures or cooperative joint ventures | ✓ Restriction cancelled |
| Manufacturing | Processing of nuclear fuel and nuclear radiation | ✓ Investment in refining and processing of radioactive mineral products, production of nuclear fuel shall be prohibited | ✓ Restriction cancelled |
| | Automobile | <ul style="list-style-type: none"> ✓ The foreign shareholding limit on special purpose motor vehicle, new-energy vehicle manufacturing shall be cancelled ✓ The foreign shareholding limit on commercial vehicle manufacturing shall be cancelled in 2020 ✓ Both the foreign shareholding limit on passenger vehicle manufacturing and the restriction that a single foreign investor can only set up no more than two joint ventures in China shall be cancelled in 2022 | |
| Culture sports and entertainment | Culture | <ul style="list-style-type: none"> ✓ For performance agency institutions, it shall be under Chinese majority ownership ✓ Investment in art performance groups shall be prohibited | <ul style="list-style-type: none"> ✓ The restriction that performance agency institutions shall be under Chinese majority ownership will be cancelled ✓ Investment in art performance groups shall be permitted under Chinese majority ownership (while previously it was prohibited) |

| | | | |
|---------|-------------------|---|---|
| Service | Telecommunication | <ul style="list-style-type: none"> ✓ Within the business scope of China's WTO commitments, the foreign shareholding limit for value-added telecommunication services (except for e-commerce businesses) shall be 50% ✓ Within the business scope of China's WTO commitments, for basic telecommunication services, it shall be under Chinese majority ownership | <ul style="list-style-type: none"> ✓ Within the business scope of China's WTO commitments, the foreign shareholding limit for value-added telecommunication services (except for e-commerce businesses) shall be 50% ✓ Within the business scope of China's WTO commitments, for basic telecommunication services, it shall be under Chinese majority ownership (the operator shall be legally established companies specializing in basic telecommunication services) ✓ The pilot policies from the original area of Shanghai PFTZ [28.8 square kilometres] shall be promoted to all the free trade zones, which means the foreign shareholding limit on business of call centre, internet service provider, IP-VPN, multi-party communication service shall be cancelled |
| | Finance | <ul style="list-style-type: none"> ✓ The foreign shareholding limit on banking industry shall be cancelled ✓ The foreign shareholding limit on securities, fund management and futures, life insurance company shall be loosened to 51% ❖ The foreign shareholding limit for above shall be cancelled in 2021 | |

COMMENTS

Both negative lists expand the opening-up regarding service industry and loosening the access on manufacturing, agriculture and energy resource. Compared with nationwide negative list, FTZ negative list specifically moves further in some fields, playing the pilot role. Meanwhile, the negative lists provide a roadmap and timetable of opening-up regarding automobile and finance industry, which is of significance for related enterprises to determine own business strategy.

However, it takes time to see how the lists perform in practice and how related parties consider the benchmark regarding approval. For example, in terms of telecommunications business, NDRC and Ministry of Industry and Information Technology (MIIT) may have different considerations when it comes to practice. We will closely monitor the progress.

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