

## CHINA FURTHER OPENS UP MORE SECTORS TO FOREIGN INVESTMENT

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Foreign investment entering into the Chinese market is regulated by the Chinese government with the implementation of the National Negative List, the Negative List applicable for Free Trade Zones, and the Encouraged Catalogue, which stipulate restricted or prohibited sectors and sectors open to foreign investors, respectively. The recent revision of the two Negative Lists and the Encouraged Catalogue is part of the Chinese government's effort to ease market access for foreign investment.



### Foreign investment welcome

By lifting restrictions and prohibitions and to further expand the fields in which foreign investors are encouraged to invest, both nationwide and especially in central and western China and to extend the preferential policies for foreign investment to certain new sectors. Nationwide, the number of “prohibited” or “restricted” industries for foreign investment has reduced from 48 to 40. The Negative List relevant for free trade zones has been shortened to 37 listed items, down from 45. Additionally, the number of encouraged industries applicable for the whole country has increased from 348 to 415. The foreign investment is welcome to play a positive role in China's industrial development, technological progress and structural optimization.

China pledges to provide equal market access to foreign investment. However, in certain industries, such treatment can be limited for foreign investors. In 2015, China established the negative list management system and updated it on annual basis since 2017. The negative list specifies industries where foreign investors are either restricted or prohibited. Companies operating in the **prohibited industries** are not allowed to have foreign investments. **Restricted industries** are usually only accessible to foreign investors through joint venture structures with Chinese companies and often include shareholding limits. In other cases, foreign investors might need prior approval from the Ministry of Commerce (MOFCOM) to invest in a restricted industry. For any industries that are not specifically

identified in the Negative Lists, foreign investors are treated equally as domestic investors, and no additional restrictions on market access will apply.

At the same time, the Encouraged Catalogue lists industries where foreign know-how and investment are welcome.

On the 30<sup>th</sup> of June 2019, the National Development and Reform Commission ([NDRC](#)) and the Ministry of Commerce ([MOFCOM](#)) jointly issued the 2019 Edition of the Special Administrative Measures (Negative List) for Foreign Investment Access (hereinafter referred to as “**National Negative List**”), of the Special Administrative Measures (Negative List) for Foreign Investment Access in Pilot Free Trade Zones (hereinafter referred to as “**FTZ Negative List**”) and of the Catalogue of Encouraged Industries for Foreign Investment (hereinafter referred to as “**Encouraged Catalogue**”). All three regulations have entered into effect on the 30<sup>th</sup> of July 2019. The sectors which newly opened up for foreign investment under two Negative Lists and Encouraged Catalogue are summarized below.

### **THE NATIONAL NEGATIVE LIST (2019 EDITION)**

The National Negative List is for nationwide implementation. Major changes include:

- **Mining industry:**
  - a) Abolition of the restriction that the exploration and development of oil and natural gas (except for those including coal-bed methane, oil shale, oil sands, shale gas, etc.) limited to Sino-foreign equity/cooperative joint venture operations.
  - b) Abolition of the prohibition against foreign investment in exploration and mining of molybdenum, tin, antimony, and fluorite.
- **Manufacturing industry:** Abolition of the prohibition against foreign investment in the production of Xuan paper and ink sticks.
- **Electricity, thermal power, gas and water production and supply industries:** Construction and operation of pipeline networks for water supply and sewage in cities with the population over 0.5 million shall be controlled by the Chinese side. "Gas" and "Heat" are removed.
- **Transportation, warehousing and postal services industries:** Abolition of the restriction that domestic shipping agencies shall be controlled by the Chinese side.
- **Information transmission, software and information technology service industries:** Telecom companies are limited to telecommunication business opened in China's WTO accession commitments. The ratio of foreign shares of value-added telecom business shall not exceed 50% (except e-commerce, domestic multi-party communication, storage and forwarding, call center). Exceptions "domestic multi-party communication, storage and forwarding, call center" are added.
- **Water conservancy, environmental and public facilities management industries:** Abolition of the prohibition against foreign investment in the development of wildlife resources originating in China under state control.
- **Culture, sports and entertainment industries:** a) Abolition of the restriction that the construction and operation of cinemas shall be controlled by the Chinese side. b) Abolition of the restriction that performance brokers shall be controlled by the Chinese side.

### **THE FTZ NEGATIVE LIST (2019 EDITION)**

The FTZ Negative List is relevant for free trade zones and is less restrictive than the national one. The 1<sup>st</sup> FTZ Negative List was released in 2013 as China established its first pilot FTZ in Shanghai. The FTZ Negative List is generally revised every year.

In addition to the all newly opened sectors stipulated in the National Negative List, the FTZ Negative List further widens market access for foreign investors in below two sectors:

- **Agriculture, Forestry, Animal Husbandry, and Fishery:** Abolition of the regulation that foreign investors are prohibited from investing in fishing aquatic products from waters under China's jurisdiction and inland waters.
- **Manufacturing:** Abolition of the restriction that the printing of publications shall be controlled by the Chinese side.

## THE CATALOGUE FOR THE ENCOURAGED INDUSTRIES (2019 EDITION)

As a replacement of the Catalogue of Industries for Guiding Foreign Investment (2017 Revision) and the Catalogue of Priority Industries for Foreign Investment in Central and Western China (2017 Revision), the Encouraged Catalogue (2019 Edition) combines the above two catalogues and consists of two sub-catalogues – one applies to the whole country and one is applicable to 22 provinces in China's central and western regions (including three north-eastern provinces and the utmost southern province of Hainan island). The complete catalogue contains 1,108 encouraged industries in total.

Nationwide, the number of encouraged industries is now 415, with 67 items added and 45 items modified, compared to the 2017 edition. It aims to open a number of different sectors to foreign investment covering modern agriculture, advanced manufacturing, High-Tech, energy saving and environmental protection, and modern services. The key industries added to the Encouraged Catalogue include:

### Manufacturing industry

- **Computers, communications, and other electronic equipment manufacturing industry:** 5G equipment mobile terminals and its core components, etchers for integrated circuits, chip packaging equipment, cloud computing device, etc.
- **Equipment manufacturing:** Key components of industrial robots, new energy vehicles, intelligent vehicles, etc.
- **Pharmaceutical industry:** New key raw material for production of vaccines, cell therapy drugs, and large-scale cell culture products, etc.
- **New materials:** Aerospace new materials, monocrystalline silicon, large silicon wafers, etc.

### Producer services industry

- **Business services:** Engineering consulting, accounting, tax, testing and certification services, etc.
- **Trade circulation:** Cold chain logistics, e-commerce system development and application services, special railway lines construction and operation, etc.
- **Technical services:** AI technology, clean production technology, carbon capture, circular economy technology, etc.

### Other industries

- **Agriculture, forestry, animal husbandry, and fishery:** Construction and management of ecological environment protection projects.
- **Water conservancy, environment and public facilities management industry:** River and lake water environment management.
- **Health and social work:** Medical institution services.
- **Culture, sports and entertainment:** Tourism infrastructure construction and tourism information service.

The items inside the Encouraged Catalogue for the Central and Western China have been increased from 639 to 693, tailored to the respective features of the 22 designated provinces and municipality, including Shaanxi, Inner Mongolia, Liaoning, Jilin, Heilongjiang, Anhui, Jiangxi, Henan, Hubei, Hunan, Guangxi, Hainan, Chongqing, Sichuan, Guizhou, Yunnan, Tibet, Shaanxi, Gansu, Qinghai, Ningxia and Xinjiang.

Compared to the 2017 edition, 54 items have been added and 165 items have been modified. Foreign investors are encouraged to invest in industries involving:

- Agricultural products, textile, clothes and furniture manufacture, within the areas of Yunnan, Inner Mongolia and Hunan (provinces with distinctive agricultural resources and labor advantages);
- Regular IC, tablet PC and communication terminals, within the areas of Anhui, Sichuan and Shaanxi (provinces that are accelerating the development of electronic industry clusters); and
- Logistic and storage facilities and vehicle fueling stations, within the areas of Henan and Hunan (provinces with dense transportation and logistics networks).

## COMMENTS

- Simultaneously with the Foreign Investment Law coming into effect on the 1<sup>st</sup> of January 2020, the two 2019 Negative Lists will become a one-stop shop setting out all restrictions or prohibitions on foreign investment under the PRC legal regime.
- Foreign investments that fall under the Encouraged Catalogue will be granted preferential policy treatments in terms of corporate income tax, customs duties for imported self-use equipment, land price, approval procedure, etc.
- The foreign investment is encouraged to take participation in high-quality development of manufacturing. More than 80% of the added or modified items of the nationwide Encouraged Catalogue point to the manufacturing industry with an emphasis on new and high technology industries. Furthermore, foreign investment is encouraged in the producer services industry.
- Certain industries where foreign investment is no longer encouraged in the developed regions, are now being gradually transferred to the Central and Western China regions. The Encouraged Catalogue leans toward a combination of labor-intensive, technological, and supporting facilities industries to encourage development in those underdeveloped regions.
- Foreign investors should take advantage of the removal of restrictions in relevant industries, but be aware that even if a foreign investment is out of the Negative Lists or on the Encouraged Catalogue, the possibility remains that the new regulations may not be fully respected at all levels of Chinese government. Some Chinese authorities may still impose approval or other requirements when establishing such foreign invested enterprise.

## CHINA'S FOREIGN INVESTMENT: ANY QUESTIONS?

Do you have questions concerning China's New Foreign Investment Law? Our Consultant China, [Daniel Bont](#), is happy to assist. At Switzerland Global Enterprise, we offer you initial free country consultations, prepare more detailed market and competition analyses according to your needs, support you in your search for the right business partner, and inform you about legal regulations.

## LINKS

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