

China Further Updates Foreign Investment Negative List in Nationwide and FTZ

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On 30th June, 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" (NDRC, MOC [2019] No.25, hereinafter "nationwide negative list 2019 version")¹ and "the Circular on Foreign Investment Negative List of Free Trade Zone" (NDRC, MOC [2019] No.26, hereinafter "FTZ negative list 2019 version")², further relaxing market access based on the 2018 version. Implementing with effect from 30th July 2019, the 2018 version shall be terminated in the meantime.

BACKGROUND

For better guiding foreign investment, China has introduced "Foreign Investment Industry Guiding Catalogue" since 1995, classifying foreign investment industries into "prohibited", "restricted" and "encouraged" sector. In 2013, Shanghai FTZ took the lead to consolidate "prohibited" and "restricted" sector into "negative list", which was the first generation of FTZ negative list³. Later in 2017, the first generation of nationwide negative list⁴ was released based on the FTZ negative list.

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" (NDRC, MOC [2018] No.18, hereinafter "nationwide negative list 2018 version") and "the Circular on Foreign Investment Negative List of Free Trade Zone" (NDRC, MOC [2018] No.19, hereinafter "FTZ negative list 2018 version")⁵, fulfilling its promise to further open up domestic market to foreign investment.

As expected, the releases of both nationwide and FTZ negative list 2019 version further open up for investment to value-added telecommunications, transportation and culture, gradually cancelling the foreign investment shareholding limit over the above clusters.

MAIN CONTENT

[The Nationwide Negative List 2019 Version]

There are 40 items specified on the nationwide negative list 2019 version, with 11 items being modified (among which, 6 restrictions are removed and 5 relaxed) from the 2018 version. The featured clause includes full opening-up of domestic shipping agent business, part of the value-added telecommunication business, and cinema operating business to foreign investors.

¹ NDRC, MOC (28 Jun 2019). Retrieved from:
<http://www.ndrc.gov.cn/zcfb/zcfbl/201906/W020190628615780569680.pdf>

² NDRC, MOC (28 Jun 2019). Retrieved from:
<http://images.mofcom.gov.cn/wzs/201906/20190629212301720.pdf>

³ Shanghai government (29 Sep 2013). Retrieved from:
<http://www.shanghai.gov.cn/nw2/nw2314/nw2319/nw10800/nw11407/nw30984/u26aw37036.html>

⁴ NDRC, MOC (28 Jun 2017). Retrieved from:
<http://www.gov.cn/xinwen/2017-06/28/5206424/files/e4489bbd621542a480ff4c45c42fa202.pdf>

⁵ Details could be referred to News Focus 2018 No.6: <https://www.bk.mufg.jp/report/chi200402/NF2018Vol6en.pdf>

【Table 2】【Comparison between 2018 Version and 2019 Version of nationwide foreign investment negative list】

Industry	Item	2018 Version	2019 Version	Change
Mining	1	5.exploration and mining over petroleum, natural gas(except for those which include coal-bed methane, shale oil, oil sands, shale gas) , is limited to co-investment and cooperation	-	Deleted
	2			
	3	6.Investment on exploration and mining over <u>tungsten, molybdenum, tin, antimony, fluorite</u> , is prohibited	5.Investment on exploration and mining over rare earth, radioactive minerals and tungsten, is prohibited	Relaxed
	4	The foreign shareholding limit on graphite exploration, rare earth smelting and separation, tungsten smelting		
		8.Investment on exploration and mining over radioactive minerals, is prohibited		
Manufacturing	5	14.Manufacturing of rice paper, ink cake, is prohibited	-	Deleted
Infrastructure	6	16.The construction and management over <u>fuel gas, heat</u> and water supply network in the city whose population of 500 thousand, shall be under Chinese majority ownership	12.The construction and management over water supply network in the city whose population of 500 thousand, shall be under Chinese majority ownership	Relaxed
Transportation	7	19.Domestic shipping agency shall be under Chinese majority ownership	-	Deleted
Value-added Telecommunication	8	25.Within the business scope of China's WTO commitments, foreign shareholding shall not exceed 50% (except for e-commerce); basic telecommunication services, shall be under Chinese majority ownership	20.Within the business scope of China's WTO commitments, foreign shareholding shall not exceed 50% (except for <u>e-commerce, domestic multiple communication, call centre and storage transfer service</u>); basic telecommunication services shall be under Chinese majority ownership	Relaxed
Agriculture	9	36.Investment over the wild animal and plant resources that are originated and under protection in China	-	Deleted
Culture	10	44.The construction and management of cinema shall be under Chinese majority ownership	-	Deleted
	11	47.The performance agency shall be under Chinese majority ownership	-	Deleted

【The FTZ Negative List 2019 Version】

On the other hand, the FTZ negative list 2019 version specified 37 items in total, with 11 items being modified from the 2018 version. Among which, 6 restrictions are removed and 5 relaxed. The relaxed articles are precisely in accordance with the description in the national version, while the removed articles involves additional open-up regarding ①fishing of water products; ②publication printing and ③development of wild animal and plant resources that are originated in China.

[Table 3][Comparison between 2018 and 2019 version of FTZ foreign investment negative list]

Industry	Item	2018 Version	2019 Version	Change
Agriculture	1	4.Investment over water products fishing in domestic sea area and China sea jurisdiction, is prohibited	-	Deleted
Mining	2	5.Investment on exploration and mining over tungsten, molybdenum, tin, antimony, fluorite, is prohibited	4.Investment on exploration and mining over rare earth, radioactive minerals and tungsten, is prohibited (entering rare earth area or acquire mining geographic information, mining sample and manufacturing techniques without approval is prohibited)	Relaxed
	3	6.Investment on exploration and mining over rare earth, is prohibited(entering rare earth area or acquiring mining geographic information, mining sample and manufacturing techniques without approval is prohibited)		
	4	7.Investment on exploration and mining over radioactive minerals, is prohibited		
Manufacturing	5	8.Printing publications shall be under Chinese majority ownership	-	Deleted
	6	12. Manufacturing of rice paper, ink cake, is prohibited		
Infrastructure	7	14.The construction and management over <u>fuel gas, heat</u> and water supply network in the city whose population of 500 thousand, shall be under Chinese majority ownership	12.The construction and management over water supply network in the city whose population of 500 thousand, shall be under Chinese majority ownership	Relaxed
Transportation	8	17.Domestic shipping agency shall be under Chinese majority ownership	-	Deleted
Value-added Telecommunication	9	23.Within the business scope of China's WTO commitments, basic telecommunication services 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	17. Within the business scope of China's WTO commitments, foreign shareholding shall not exceed 50% (except for <u>e-commerce, domestic multiple communication, call centre and storage transfer service</u>); basic telecommunication services 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	Relaxed

Agriculture	10	34. Investment over the wild animal and plant resources that are originated and under protection in China	-	Deleted
Culture	11	42. The construction and management of cinema shall be under Chinese majority ownership (the screen time shall be strict to the ratio of domestic movies and the imported, which means that by each cinema, 2/3 of the screen time must be reserved for domestic films)	-	Deleted

In addition, on 2nd July, 2019 Premier Li delivered in his speech at the World Economic Forum, promising China to further improve business environment and become a more open, transparent and predictable economy for foreign investment. As well, he agreed to allow fully foreign ownership of securities, futures and life insurance firms in 2020, a year ahead of schedule.

COMMENTS

It is reported that before 2020, the restriction to invest in industries other than those specified on Foreign Investment Negative List shall be removed thoroughly to make sure the consistency of market access for both foreign investment and domestic companies. The releases of both nationwide and FTZ negative lists are highly expected to create a more open and friendly investment environment and opportunities for foreign investment. We will keep an eye closely on related policy trend and update the development accordingly.

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