

# China Legal Report\*

## September 2019



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## I. Introduction

On June 30, 2019, the PRC National Development and Reform Commission and the Ministry of Commerce jointly released the *Special Administrative Measures (Negative List) for Foreign Investment Access (2019 Edition)* (“2019 National List”), the *Special Administrative Measures (Negative List) for Foreign Investment Access in Pilot Free Trade Zones (2019 Edition)* (“2019 FTZ List”) and the *Industry Catalogue on Encouraged Foreign Investment (2019 Edition)* (“2019 Encouraged Catalogue”), all of which will come into force on July 30, 2019.

Both the 2019 National List and the 2019 FTZ List cut short the lists of the 2018 editions, while categories encouraging foreign investments are newly added or amended in various industries in the 2019 Encouraged Catalogue compared to the *Industry Guidelines Catalogue on Foreign Investment (Revision 2017)* and the *Catalogue of Priority Industries for Foreign Investment in Central and Western China (Revision 2017)*.

## II. Negative Lists

The 2019 National List and the 2019 FTZ List (“2019 Negative Lists”) introduce new opening-up measures to foreign investors by shortening the 2018 lists. At the same time, the 2019 Negative Lists do not introduce any new or stricter rules. The 2019 National List is shortened from previously 48 to 40 restrictions, corresponding to a reduction ratio of 16.7%. The restrictions in the 2019 FTZ List are shortened from previously 45 to 37, corresponding to a reduction ratio of 17.8%.

### 1. 2019 National List

Compared to the 2018 national list, the 2019 National List implements the following major changes:

#### (1) Promoting the opening-up measures in the service industry

- Transportation: “domestic shipping agencies must be controlled by the Chinese side” is deleted, which means foreign entities can be the majority shareholder of a Chinese shipping agency starting from July 30, 2019.
- Infrastructure: the restriction with the wording “the construction and operation of the gas, heat network for a city with population of more than 500,000 must be controlled by the Chinese side” is cancelled.

- Culture: the construction and operation of a cinema or performance broker is no longer restricted to be controlled by the Chinese side.
- Value-added telecommunication: a cap of 50% share ratio by foreign entities in domestic multi-party communications services, stores and forward services as well as call center services is cancelled, that is to say, foreign entities may now hold more shares than the Chinese shareholder(s).

(2) Restrictions on agriculture industry, mining industry and manufacturing industry are relaxed

- Agriculture: foreign investors are allowed to invest in the development of wild animal and plant resources originated from China.
- Mining: the exploration and development of oil and natural gas are no longer limited to joint ventures and co-operations; the prohibition of foreign investment in exploration and mining of molybdenum, tin, antimony and fluorite is cancelled.
- Manufacturing: foreign investment is now permitted in the manufacturing of Xuan paper and ink sticks.

## **2. FTZs have been playing an important role as test fields**

Similar policy changes are made to the 2019 FTZ List as compared to the 2018 edition. Except for performance broker, exploration and development of oil and natural gas, the relaxation of restrictions on transportation, infrastructure, culture, value-added telecommunications, agriculture, mining and manufacturing in the 2019 National List is also applicable to the 2019 FTZ List.

It is interesting to note that the 2019 National List cancelled the restrictions on performance broker as well as the exploration and development of oil and natural gas, which was already implemented in the 2018 FTZ List. That is to say, the two lists are slowly converging.

Moreover, the 2019 FTZ List cancelled the restrictions on businesses with regard to fishing of aquatic products in sea and inland waters under China's jurisdiction as well as with regard to printers of publications, which is an advance pilot policy expected to be expanded nationwide in the next/few year(s).

### III. Encouraged Catalogue

The 2019 Encouraged Catalogue includes *the Nationwide Industry Catalogue on Encouraged Foreign Investment* (“National Catalogue”) and *the Catalogue of Priority Industries for Foreign Investment in Central and Western Region* (“Central and Western Catalogue”). It lists the industries where foreign investments are welcome either on a nationwide scope (National Catalogue) or in 22 central, western or northeastern provinces. Compared to the former 2017 edition, the Encouraged Catalogue has been extended from 348 to 415 industries. The field for foreign investment has undergone the following significant changes:

#### 1. Manufacturing industry is still the key direction to encourage foreign investment

80% of the added or amended articles in the National Catalogue fall under the manufacturing industry, focusing on high-end, intelligent and green manufacturing. The following items are newly added or amended in the National Catalogue and now belong to the encouraged foreign investment industry:

- Electronic information: vision sensors of 5G and their core components, etching machine for mega integrated circuit, chip packaging equipment as well as cloud computing equipment, software and system, etc.
- New material: aviation and aerospace new materials, single silicon, etc.
- Medical: new key raw materials for cell therapy drugs, large-scale cell culture products, etc.
- Equipment: industrial robot, new energy vehicle and smart car key components, etc.

#### 2. Encouraging foreign investment in the manufacturing service industry

The following related items are newly added or revised respectively in the National Catalogue:

- Commercial service: project consulting, accounting, taxation, inspection & testing, etc.
- Technical: AI, cleaning manufacture, etc.
- Trade: cold chain logistics, e-commerce, railway arterial network, etc.

### **3. Further encouragement in the central and western regions with particular industries compatible with local conditions**

- Anhui, Sichuan, Shanxi provinces with high speed development of the electronic industry: integrated circuit, tablet PC, communications terminal and so on are newly added in the Central and Western Catalogue
- Yunnan, Inner Mongolia, Hunan provinces with unique agriculture resources and labor advantages: newly added or revised articles related to agricultural technology and production of textile clothing and furniture, etc.
- Henan province with intensive transportation and logistics: increased logistics and warehouse equipment, gas filling stations for vehicle.

## **IV. Conclusion**

In conclusion, the 2019 Encouraged Catalogue further extends the areas where foreign investments are welcome, particularly in provinces such as Anhui, Hunan, Sichuan, Henan, Yunnan and others. Advanced manufacturing, high technology, new technology, sustainable energy (energy conservation) and environmental protection are the areas where foreign investments are especially welcome. While the encouraged industries are broadened, restrictions stipulated by the 2019 Negative Lists have narrowed down.

Fewer restrictions and more encouraged industries for foreign investment may be interpreted as a clear signal for China's said goal to further open up its market. The new Foreign Investment Law (FIL), effective from January 1, 2020, further aims to encourage foreign investments.

However, past experience indicates that the implementation of the new measures (Lists and Catalogues) and the FIL will take time. Although these new measures and the FIL are very daringly formulated, it remains to be shown, how China wants the new rules to be understood and practiced.

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