

China Issues 2019 Negative List for Foreign Direct Investment

On 30 June 2019, the People's Republic of China (“**PRC**”) Ministry of Commerce (“**MofCom**”) and the National Development and Reform Commission (“**NDRC**”) of the PRC, with approval from the State Council, released Decree 25 and published the Negative List for Foreign Direct Investment Industry (2019 version) (“**2019 Negative List**”). The 2019 Negative List will repeal the Negative List for Foreign Direct Investment Industry (2018 version) promulgated on 28 June 2018 (“**2018 Negative List**”) and will come into force on 30 July 2019. This update gives a short summary of the key differences between the 2019 Negative List and the 2018 Negative List.

Negative List for Foreign Direct Investment

Foreign direct investment (“**FDI**”) in China is subject to the negative list for market access (“**Negative List**”) in terms of whether certain industries are “prohibited” or “restricted” for foreign investment purposes. Foreign companies/foreigners are not allowed to invest in a “prohibited” industry. For foreign investment in a “restricted” industry, it is subject to more scrutiny and approval from a higher authority. The time taken to obtain the relevant approval will also generally be longer (as compared to that for those industries not on the Negative List). Foreign investment in anything not listed as “prohibited” or “restricted” on the Negative List will be granted equal access and equal treatment as compared to domestic investment. The latest version of the Negative List currently in force is the 2018 Negative List with 48 industries listed as either “prohibited” or “restricted” for FDI purposes.

Major Changes in the 2019 Negative List

The 2019 Negative List shortens the 2018 Negative List and includes only 40 industries which are either “restricted” or “prohibited” for foreign investment purposes. The main changes are summarised as follows:

2018 Negative List	2019 Negative List
Oil, natural gas exploration/exploitation (not 100% foreign shareholding)	Deleted
Investment in manufacturing of rice paper (宣纸) and ink stick (墨锭) (prohibited)	Deleted
Domestic ship agency company (majority ownership by Chinese shareholders)	Deleted
Development of wild animal and plants which originated from PRC (prohibited)	Deleted
Operation and construction of theatres (majority ownership by Chinese shareholders)	Deleted
Show/performance agency (majority ownership by Chinese shareholders)	Deleted

Exploration and exploitation of tungsten(钨), molybdenum (钼), tin (锡) and fluorite (萤石) mines; exploration, selection and exploitation of rare earth and radioactive mines (prohibited)	Exploration, selection and exploitation of tungsten(钨), rare earth and radioactive mines
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Negative List for FDI in Free Trade Pilot Zones

MofCom and NDRC also promulgated (on 30 June 2019) Decree 26, a new version of the Negative List for FDI in Free Trade Pilot Zones (“**2019 FTPZ Negative List**”). The 2019 FTPZ Negative List contains three key differences as compared to the 2019 Negative List:

- Chinese majority shareholding for investment in gas and heat supply network for cities with population of above 500,000 is not required.
- There are no foreign shareholding restrictions for investment in certain value-added telecommunication services (*i.e.*, call centre, domestic multiparty communication (国内多方通信) and storage and transmission (存储转发)).
- There are no foreign shareholding restrictions for investment in marine products dredging and printing of publications.

It is widely expected that the above three changes will be incorporated into future version(s) of the Negative List after certain trial period(s) in the Free Trade Pilot Zones.

If you would like information and/or assistance on the above or any other area of law, you may wish to contact the partner at WongPartnership that you normally work with or any of the following partners:



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