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Special Administrative Measures for Access of Foreign Investments (Negative List) (2020 Edition)



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INTRODUCTION

On June 23, 2020, China's National Development and Reform Commission and Ministry of Commerce released the No.32 Order and promulgated the *Special Administrative Measures for Access of Foreign Investments (Negative List) (2020 Edition)*, which took effect on July 23, 2020. Adhering to the principle of "reduction only", the current amendment to the *Negative List* have further cancelled the prohibitions or loosened the restrictions on foreign investments – the 40 items in the *2019 Edition* have been reduced to the 33 items in the *2020 Edition*.

BACKGROUND

In recent years, China has been making in-depth explorations in applying the regulatory mechanism on foreign investments known as "pre-access national treatment plus negative list", so as to keep improving its opening-up. The *P.R.C. Foreign Investment Law* and its *Implementing Regulations* promulgated in 2019 have officially established the said regulatory mechanism "pre-access national treatment plus negative list" on the legislative level – the *Negative List* specifies the areas where foreign investments are prohibited or restricted, while national treatment shall be provided for foreign investments in areas other than those specified in the *Negative List*. The *Negative Lists* formulated for nationwide application and for application in the Pilot Free Trade Zones were annually amended during the years from 2017 to 2019, according to which the prohibitive or restrictive measures were reduced from 93 and 122 to 40 and 37 respectively. A series of major opening-up measures were launched in the financial, automobile and other industries. Through the expansion of opening-up, confidence in foreign investments has been greatly shored up. During the period from 2017 to 2019, despite the continued worldwide decrease in transnational investments, China attracted foreign investments in the amounts of 136.3 billion USD, 138.3 billion USD and 141.2 billion USD for those years, retaining its second place across the globe and accomplishing stable increase and quality improvement.

From the beginning of 2020, the COVID-19 epidemic has brought tremendous impacts on global transnational investments, greatly jeopardizing the world economy and cradling protectionism and unilateralism. Facing the complex situation, China will remain committed to expanding its reform and opening-up, loosening its market access and optimizing its business environment. Meanwhile, China will promote higher-level opening-up and significantly reduce the items in the *Negative List*. All these efforts show China's determination in expanding its opening-up, as well as China's support for the economic globalization. In this context, National Development and Reform Commission and Ministry of Commerce promulgated the *Special Administrative Measures for Access of Foreign Investments (Negative List) (2020 Edition)*.

OVERVIEW

It is reported that major changes in the current 2020 Edition include:

1.Expedite opening-up in key areas of service industries

Finance:

Cancelling restrictions on the proportions of foreign investments in securities companies, securities investment fund management companies, futures companies and life insurance companies;

Infrastructure:

Deleting the provision that investment in the construction and operation of water supply and sewage pipe networks in a city with more than 500,000 residents must be controlled by the Chinese party;

2.Loosen the access for manufacturing and agriculture industries
<p>Manufacturing: Removing the restriction on the proportion of foreign investment in manufacturing of commercial vehicles; Cancelling the prohibition on investment in the smelting and processing of radioactive minerals and the production of nuclear fuels;</p>
<p>Agriculture: Loosening the proportion of shares held by the Chinese party in a company undertaking the selection and cultivation of new varieties of, and production of the seeds of, wheat, from the controlling proportion to 34%;</p>
3.Continue to launch more pilot areas in the pilot free trade zones
<p>Medicine: Cancelling the prohibition on foreign investments in traditional Chinese medicine decoction pieces;</p>
<p>Education: Permitting foreign investments in establishing occupational education institutions within the educational system;</p>

In addition, a comparison between the *2019 Edition and the 2020 Edition* shows that no amendment has been made to the section concerning the culture, sports and entertainment industries.

ANNEX

Special Administrative Measures for Access of Foreign Investments (Negative List) (2020 Edition)

Notes

I. The *Special Administrative Measures for Access of Foreign Investments (Negative List)* (hereinafter the "*Negative List for Access of Foreign Investments*") set out in a centralized manner special administrative measures in respect of the access of foreign investments, such as limits on the proportion of foreign investment and the requirements on senior management. Sectors not specified in the *Negative List for Access of Foreign Investments* shall be subject to administration under the principle of treating domestic investments and foreign investments equally.

II. The *Negative List for Access of Foreign Investments* provides the transition period for some sectors to abolish or ease access limits; access limits on these sectors will be abolished or eased on schedule upon expiry of the transition period.

III. Foreign investors are forbidden to engage in investment activities as individual businesses, investors of sole proprietorship enterprises or members of farmers' professional cooperatives.

IV. The relevant competent departments shall, in the course of performing their duties in accordance with the law, refuse to handle such relevant matters as licensing and business registration where a foreign investor intends to invest in any sector falling within the scope of the *Negative List for Access of Foreign Investments* but fails to meet the requirements thereof; and refuse to handle the relevant approval matters if the approval involves any fixed asset investment project. If foreign investors intend to invest in sectors subject to limits on the proportion of foreign investment, they are not allowed to establish foreign-invested partnerships.

V. After being examined by the relevant competent department of the State Council and reported to the State Council for approval, specific foreign investments may not be subject to the provisions set out in the *Negative List for Access of Foreign Investments* on the relevant sectors.

VI. Where the merger and acquisition of affiliated domestic companies by domestic companies, enterprises or natural persons via the companies legally established or controlled overseas thereby occur, the relevant provisions on foreign investment, overseas investment and foreign exchange management shall apply.

VII. In terms of measures concerning administrative examination and approval, qualification requirements, national security, etc. for such sectors as culture and finance, which are not specified in the *Negative List for Access of Foreign Investments*, the existing provisions shall apply.

VIII. If other provisions in the *Closer Economic Partnership Arrangement between Mainland China and Hong Kong* and its follow-up agreements, the *Closer Economic Partnership Arrangement between Mainland China and Macao* and its follow-up agreements, the *Cross-Strait Economic Cooperation Framework Agreement* and its follow-up agreements, and in any international convention or treaty of which China is a contracting state or to which China has acceded, offer more preferential access treatment to foreign investors, such provisions shall prevail. Where more preferential opening-up measures are offered to eligible investors in special economic zones, such as pilot free trade zones, the relevant provisions shall prevail.

IX. The *Negative List for Access of Foreign Investments* shall be interpreted by the National Development and Reform Commission and the Ministry of Commerce in concert with related departments.

Special Administrative Measures for Access of Foreign Investments (Negative List) (2020 Edition)

No.	Special Administrative Measures
A. Agriculture, Forestry, Animal Husbandry and Fishery	
1	The Chinese party shall hold at least 34% of the shares of a company undertaking the selection and cultivation of new varieties of, and production of the seeds of, wheat; selection and cultivation of new varieties of, and production of seeds of, corn, must be undertaken by a company controlled by the Chinese party.
2	Investment in the research, development, breeding and planting of China's rare and unique precious quality varieties as well as the production of relevant breeding materials (including quality genes of planting, animal husbandry and aquaculture) is banned.
3	Investment in the selection of genetically modified varieties and the production of genetically modified seeds (fingerlings) in respect of crops, breeding stock and poultry, and aquatic fingerlings is prohibited.
4	Investment in fishing for aquatic products in sea areas under Chinese jurisdiction and in inland waters is prohibited.
B. Mining	
5	Investment in rare earths, and the reconnaissance, mining and beneficiation of radioactive minerals and tungsten are prohibited.
C. Manufacturing	
6	Investment in the printing of publications must be controlled by the Chinese party.
7	Investment in the application of such processing techniques of traditional Chinese medicine decoction pieces as

No.	Special Administrative Measures
	steaming, frying, cauterizing and calcining and the manufacturing of Chinese patent medicine products with a secret formula is prohibited.
8	Except for special vehicles, new-energy vehicles and commercial vehicles, shares of a manufacturer producing other types of vehicles, held by Chinese parties, shall be 50 percent at least, and a single foreign investor may establish up to two joint ventures in China to manufacture the same type of vehicles (In 2022, limits on the foreign shareholding will be abolished for passenger vehicles, and the restriction that a single foreign investor may establish up to two joint ventures in China to manufacture the same type of vehicles will be eliminated as well).
9	Investment in the manufacturing of ground receiving facilities and key parts for satellite television broadcasting.
D. Production and Supply of Electric Power, Heating Power, Gas and Water	
10	Investment in the construction and operation of nuclear power plant must be controlled by the Chinese party.
E. Wholesale and Retail Industry	
11	Investment in the wholesale and retail of leaf tobacco, cigarettes, re-dried leaf tobacco and other tobacco products is banned.
F. Communication and Transportation, Storage and Mail	
12	Domestic water transportation companies must be controlled by Chinese parties.
13	A public air transportation company must be controlled by the Chinese party, and the investment made by a single foreign investor together with its related-party enterprises in such company shall not exceed 25 percent, and such company's legal representative must be a Chinese citizen. Legal representatives of general aviation companies must be Chinese citizens, of which, those for the agriculture, forestry and fishery industries are limited to joint ventures only, while others shall be controlled by Chinese parties.
14	Investment in the construction and operation of civil airports must be relatively controlled by the Chinese party. Foreign parties are not allowed to participate in the construction and operation of airport towers.
15	Investment in postal service companies and the business of delivery mail domestically is prohibited.
G. Information Transmission, Software and Information Technology Services	
16	Telecommunications companies are limited to investment in the telecommunications business opened according to China's WTO accession commitments; the proportion of foreign investment in a value-added telecommunications business (excluding e-commerce business, domestic multi-party communications, store-and-forward and call centers) shall not exceed 50 percent; the basic telecommunication business must be controlled by the Chinese party.
17	Investment in internet news services, online publishing services, online audio-visual program services, internet culture operation (excluding music), and internet public-oriented information releasing services (excluding content of the abovementioned services that is permitted under China's WTO accession commitments) is prohibited.
H. Leasing and Business Services	
18	Engagement in Chinese legal affairs (except for the provision of information relating to the impacts of China's legal environment) is prohibited; becoming the partner of a domestic law office is prohibited.
19	Investment in market surveys is limited to joint ventures; specifically, investment in broadcasting and television listening and rating surveys must be controlled by the Chinese party.
20	Investment in social surveys is banned.

No.	Special Administrative Measures
I. Scientific Research and Technical Services	
21	Investment in the development and application of technologies of human stem cell and gene diagnosis and treatment is prohibited.
22	Investment in humanistic and social science research institutions is prohibited.
23	Investment in geodetic surveying, hydrographic surveying and charting, surveying and mapping via aerial photography, ground mobile surveying, surveying and mapping of administrative area borders, compiling of topographical maps, world administrative maps, national administrative maps, administrative maps at the provincial level or below, national school maps, local school maps and true three-dimensional maps, compiling of navigation electronic maps and regional investigations in terms of geological mapping, mineral geology, geophysics, geochemistry, hydrogeology, environmental geology, geological disasters and remote sensing geology is prohibited (Mining right owners working within the scope of their mining rights will not be subject to this special administrative measure).
J. Education	
24	Investment in pre-school institutions, senior high schools and institutions of higher learning is limited to schools jointly run by Sino-foreign entities; such schools must be dominated by the Chinese parties (principals or major administration heads in charge of such schools shall be of Chinese nationality, and Chinese members of the council, board of directors or joint management committee shall account for at least half).
25	Investment in compulsory education institutions and religious education institutions is prohibited.
K. Health and Social Work	
26	Investment in medical institutions is limited to joint ventures.
L. Culture, Sports and Entertainment	
27	Investment in news agencies (including but not limited to press agencies) is prohibited.
28	Investment in editing, publishing and production of books, newspapers, periodicals, audio-visual products and electronic publications is prohibited.
29	Investment in all levels of broadcasting stations, television stations, radio and television channel and frequency, radio and television transmission networks (including radiating stations, rebroadcasting stations, broadcasting and TV satellites, satellite uplink stations, satellite signal receiving and rebroadcasting stations, microwave stations, monitoring stations and cable broadcasting and television transmission network, etc.) and engagement in the video on demand business of radio and TV and in the provision of services of installation of the ground receiving facilities for satellite television broadcasting is prohibited.
30	Investment in radio and television program production and operation (including introduction) companies is prohibited.
31	Investment in film production companies, distribution companies, cinema companies and the introduction of films is prohibited.
32	Investment in enterprises selling cultural relics by auction, cultural relic stores and state-owned cultural relic museums is prohibited.
33	Investment in cultural and artistic performance groups is prohibited.