AUGUST 2019

What's New in the 2019 Negative Lists?

BRITISH CHAMBER OF COMMERCE IN CHINA
中国英国商会

POLICY INSIGHTS

WHAT'S NEW IN THE 2019 NEGATIVE LISTS?

Tuesday 30th July marked the implementation of China's revised *Negative* and *Encouraged Lists* for foreign investment by the National Development and Reform Commission (NDRC) and the Ministry of Commerce (MOFCOM). These effectively act as a manual for foreign businesses in China to understand which sectors they are prohibited and restricted from investing in by the authorities, and which enjoy incentives. The new *Lists* are composed of two sets – one applying nationwide *(Special Administrative Measures on Access to Foreign Investment (2019 Edition))* and one applying purely to Free Trade Zones (FTZ) such as Shanghai and Guangdong (Free Trade Zone Special Administrative Measures on Access to Foreign Investment (2019 Edition)). The *Negative Lists* replace their 2018 predecessors, whilst the *Encouraged Lists* renew the 2017 versions.

For new entrants to the Chinese market, the regulations may seem complex but they are in fact intended to make them simpler by consolidating them in the *Lists*. Initially piloted in Free Trade Zones (FTZs) in 2015, they were later expanded to encapsulate foreign investment nationwide, and a separate list governing both domestic and foreign business was produced. The most restricted areas are those related to national security, strategic natural resources and the public interest. Whilst this may mean a less onerous approach to market entry, critics have said that it will increase compliance costs as the focus shifts from the approvals process to scrutiny during the conduct and operations stage.

Since the *Negative Lists*' inception, the number of restricted sectors has been gradually reduced to 40 on this year's *Foreign Investment (FI) National Negative List*, and 37 in the *FI FTZ List*, compared to 48 and 37 respectively in 2018. Earlier in the year at the March Boao Forum, Li Keqiang alluded to reductions in specific sectors in the *Negative List*, which was followed by openings-up in the services, agriculture, mining and manufacturing sectors in the *List's* next iteration. The main changes to the national *Negative List* are as follows:

Sector	2018 Negative List	2019 Negative List
Petrochemicals	Exploration and development of oil and natural gas limited to joint ventures and cooperation.	Removed.
Mining	Foreign investment in the exploration and mining of certain minerals including rare earths and radioactive materials prohibited.	Restrictions removed in the exploration and mining of molybdenum, tin, antimony and fluorite.
Manufacturing	Foreign investment in the production of Xuan paper and ink ingot prohibited.	Removed.
Production and supply of electricity, heat, gas and water	For cities with a population over 500,000, construction and operation to be controlled by the Chinese side.	Restrictions in the construction and operation of gas and heat in cities with a population over 500,000 removed.

Transportation	Domestic shipping agents controlled by the Chinese side.	Removed.
Value-added telecommunica-tions (VATs)	Foreign share of VATs not to exceed 50% and services to be controlled by the Chinese side.	50% limit on foreign shares in multi-party communication, store-and-forward and call centre businesses removed.
Water conservancy, environment and public facilities management	Foreign investment in exploitation of protected Chinese wildlife resources prohibited.	Removed.
Culture, sports and entertainment	Construction and operation of cinemas controlled by the Chinese side.	Removed.

The *Encouraged List* designates the sectors that benefit from preferential tax and land policy, in order to incentivise investment into the less developed regions of China and build high-end manufacturing capacity. This explains the choice for two separate sections in the list – a national section and one that applies to the central and western areas of China – and the fact that more than 80% of the 2019 *List* changes relate to manufacturing. The main catalogue contains 415 items – an increase of 67 new and 45 revised items from the 2017 *List*, whilst the central-and-western *List* contains 693 items of which 54 are new and 145 are revised. The industry areas added are:

- **Manufacturing**
  - Computer and communications
  - Future technologies equipment
  - Pharmaceuticals
  - New materials
- **Producer services**
  - Business services
  - Trade circulation
  - Technical services
- **Agriculture**
- **Water conservancy and environment**
- **Health and social work**
- **Tourism infrastructure and services**

The revisions to the *Negative List* and *Encouraged List* represent a step in the right direction in the ongoing liberalisation and opening-up of the Chinese economy. However, whilst central government rhetoric at Davos and during the Two Sessions is encouraging, businesses remain concerned that these national policy changes will not be met with effective implementation. On paper, the complete removal of an industry from the *Negative List* should imply the elimination of any market access barriers, yet for British businesses many of the regulatory challenges at a local industry level remain. Furthermore, guidelines as to the implications of the implications of revisions to the *Negative List* or *Encouraged List* for businesses have yet to be released, generating uncertainty among foreign businesses who are faced with a conflicting regulatory landscape at the central and local level.

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