
China Relaxes Some Restrictions on Foreign Investment in China's Pilot Free Trade Zones

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The General Office of China's State Council posted on June 16 the Special Measures on the Administration of Entry by Foreign Investment in Pilot Free Trade Zones (Negative List) (2017 edition) (Guobanfa [2017] No. 51, dated June 5 and effective July 10) ([click here](#)) ("Measures").

1. Negative List for Foreign Investment in Pilot Free Trade Zones (PFTZs)

The Measures, including the Negative List 2017 edition, repeal and replace the 2015 edition and consist of 95 items across 15 sectors and 40 industries. The Measures specify those industries in which foreign investment remains prohibited or restricted in China's PFTZs. The Measures mark a reduction of 27 items and 10 industries from the 2015 edition. For all industries not on the negative list, foreign investment will not require government approval; instead, foreign investors may establish a company through a simplified filing process provided that the industry is open to private investment.

Foreign investment in the PFTZs (which now consist of 11 provincial-level jurisdictions)¹ nevertheless remains subject to other laws and regulations on the administration of national security, public order, public culture, financial prudence, government procurement, subsidies, special procedures, NGOs, and taxation. In particular, foreign investment in PFTZs which impacts national security must undergo a security examination under the Provisional Measures on National Security Examination of Foreign Investment in Pilot Free Trade Zones (which became effective in parallel with the Negative List 2015 edition, "National Security Provisional Measures"). As the National Security Provisional Measures apply to foreign investment relating not only to national defense but also to economic stability, basic social order, cultural security, public morals, network security and research on technology related to national security, a wide variety of foreign investments in PFTZs are subject to national security review.

2. Negative List 2017 Edition vs. 2015 Edition

The Measures mark a reduction of the 27 items in which restrictions have been removed or relaxed in the 2017 edition. In particular, they include 2 in the mining sector, 10 in the manufacturing sector,

2 in the transportation services sector, 1 in the information technology services sector, 4 in the financial services sector, 4 in the leasing and commercial services sector, 1 in the education sector and 3 in the cultural, sports and entertainment sector. The 27 items are listed in the appendix.

3. Negative List 2017 Version vs. Draft Guiding Catalogue

Much of the Negative List 2017 edition mirrors the changes made by the new edition of the Catalogue for the Guidance of Foreign Investment Industries (a draft of which was released late last year, [click here](#)), including reducing the number of sectors that are restricted or prohibited to foreign investors and reducing the number of industries in which foreign investors can participate only through a joint venture with Chinese partners or are subject to an equity cap. This includes removing restrictions in specific mining, manufacturing, education, financial services and culture, sports and entertainment industries.

It is, however, more comprehensive and goes further in removing other restrictions on foreign investment than under the draft Catalogue, including certain restrictions in:

- Design and manufacture of general aircraft weighing 6 tons or less with up to 9 seats (remain subject to joint venture structure under the draft Catalogue);
- Investment in business premises providing Internet access services (remains prohibited under the draft Catalogue);
- Performance managing agencies that provide services in the PFTZ provinces or municipalities (the controlling interest held by the Chinese party under the draft Catalogue).

The Negative List is more specific than the draft Catalogue in respect of market entry and business scope in some sectors. For instance, in the draft Catalogue, the restrictions in financial services sectors remained largely intact, while the 2017 edition allows a slightly wider opening to foreign investment in the banking and insurance industries compared to the 2015 edition. Take insurance industry, the Negative List 2017 edition has deleted the requirement for regulatory approval of affiliated reinsurance transactions (both ceding-in and ceding-out), while retaining the equity cap on foreign investment in life insurance and insurance asset management companies (industry 28 item 56) and qualification requirements for foreign shareholders (industry 28 item 57).

4. Conclusion

Foreign investment growth throughout 2016 is relatively flat. The State Council earlier this year published the Notice on Several Measures on Increasing of Openness to Foreign Investment and Active Use of Foreign Investment to assure expanded openness to foreign investment (for our client alert on the State Council Measures, please [click here](#)). At the State Council's executive meeting on June 7, Premier Li Keqiang also stressed the importance of providing a supportive business environment to attract more foreign investment ([click here](#)).

The changes in the Negative List 2017 edition, although consistent with China's commitment to offer more liberal market entry requirements to foreign investment, remain modest in such critical sectors as financial services and telecommunications in which foreign investors have long sought greater access and a level playing field with Chinese investors. In addition, such modest openings

are unlikely to compensate for the structural and macro-level issues deterring foreign investors from entering China, such as technology transfer requirements under the Cybersecurity Law and recent capital control measures. There are also concerns that the National Security Provisional Measures will impose restrictions on foreign companies that, if strictly applied, could undermine the opening.

It is worth noting that compartmentalizing the market by province will also impact the ability to do business. Foreign investors are required to obtain separate approvals or filings to conduct business activities in each PFTZ. Moreover, foreign investment within PFTZs may have difficulty rolling out business nationwide or in the other 21 provinces, especially in sectors where market access has not been wholly or partially opened up outside PFTZs²).

¹ The 11 PFTZs are Shanghai (2013); Guangdong, Tianjin, and Fujian (2015); and Liaoning, Zhejiang, Henan, Hubei, Chongqing, Sichuan, and Shanxi (2017).

² For instance, the scope of Internet access services (providing Internet access services for Internet users) shall be limited to the Shanghai FTZ.

See www.miit.gov.cn/n1146295/n1652858/n1652930/n3757020/c3764637/content.html

Appendix – 27 Restrictions to be Removed or Relaxed in the Negative List 2017 Edition

Sector	Industry	Item	2017 Edition
Mining	Metal ores and non-metallic minerals	12 Exploration and mining of precious metals (gold, silver, platinum): restricted	Removed
		13 Mining and beneficiation of lithium ore: restricted	Removed
		15 Design and manufacture of 3-ton or heavier civilian	

Sector	Industry	Item	2017 Edition
		helicopters: joint venture only in which the controlling interest is held by the Chinese party.	Removed
	Aeronautical manufacture	16 Design, manufacture and maintenance of general aircraft: joint venture only.	Relaxed: joint venture structure requirement limited to general aircrafts that are 6-ton or heavier with maximum of 9 seats
	Shipbuilding	17. Manufacture of marine low- and medium-speed diesel engines and crankshafts: joint venture only in which the controlling interest is held by the Chinese party.	Removed
		18 Manufacture and	

Sector	Industry	Item	2017 Edition
		repair of marine engineering equipment (including modules): joint venture only in which the controlling interest to is held by the Chinese party.	Removed
		21 Products manufactured by newly established fully electric passenger vehicle manufacturing enterprises must use property brands, own their intellectual property rights and hold the relevant duly authorized invention patent.	Removed
	Automotive manufacture	22 Manufacture of railway transportation equipment limited to	

Sector	Industry	Item	2017 Edition
Manufacturing		joint venture (except for research and development, design and manufacture of ancillary passenger service facilities and equipment for high-speed railways, special passenger railways and inter-urban railways,	
Manufacturing	Manufacture of rail transportation equipment	research and development, design and manufacture of tracks and bridges related to high-speed railways, special passenger railways and inter-urban railways, manufacture of electric railway equipment and apparatus, and manufacture of passenger railway sewerage systems).	Removed

Sector	Industry	Item	2017 Edition
		23 Localization ratio for urban rail transit project equipment (minimum 70%) .	Removed
	Manufacture of communications equipment	24 Design and manufacture of civilian satellites; manufacture of civilian satellite payload joint venture only in which the controlling interest is held by the Chinese party.	Removed
	Mineral smelting and rolling processing	26 Smelting of rare metals such as molybdenum, tin (excluding tin compounds), antimony (including antimony trioxide and antimony sulphide): restricted	Removed
		29 Investment in the processing of Chinese herbal medicines listed in	

Sector	Industry	Item	2017 Edition
	Pharmaceutical manufacturing	the Administration Rules for Protection of Wild Medical Herb Resources and the Catalogue of Chinese Rare and Endangered Plants”: prohibited.	Removed
Transportation, storage and postal services	Road transport	41 Road passenger transport companies: restricted	Removed
	Water transport	46 Ocean shipping tally: restricted and joint venture only.	Removed
Information transmission, software and information technology services	Internet and related services	61 Investment in business premises providing Internet access services.	Removed
	Banking industry qualification requirements	65 Foreign investors investing in financial asset management companies must satisfy the minimum total assets requirement.	Removed
		68 (1) Branches of	

Sector	Industry	Item	2017 Edition
Financial services	Foreign- invested banks	foreign banks may not engage in “acting as agents to issue, honor and underwrite government bonds” permitted under the Commercial Banking Law.	Removed
		68 (4) Foreign-invested banks approved to operate Renminbi-denominated businesses must satisfy the minimum operational term requirements.	Removed
		77 Without approval by China insurance regulatory authority, foreign-invested insurance companies may not engage in reinsurance transactions (both cede-in or cede-out)	Removed
	Insurance business		

Sector	Industry	Item	2017 Edition
		with their affiliates.	
	Accounting and auditing	78 The managing partner (or other personnel with the highest management authority) of a special general partnership accounting firm must be a Chinese national.	Removed
	Statistical surveys	82 Foreign-related survey organizations are subject to qualification accreditations, and foreign-related social survey projects are subject to examination and approval.	Removed
		85 Credit rating services: restricted	Removed
	Other commercial	86 The legal representative of an agency engaging in cross-border travel business for private	Removed

Sector	Industry	Item	2017 Edition
	services	purposes must be a Chinese citizen with PRC permanent residence (<i>hukou</i>). 94 Chinese-foreign cooperative educational institutions may not provide education in such special fields as military, police, politics or Chinese Communist Party .	
Education	Education	105 Import of such cultural products as arts and digital literature databases and publications remain prohibited, except as included in China's WTO commitments.	Removed
	Press and publication, radio and television, financial information	118 Performance managing agencies:	Removed
			Relaxed: The

Sector	Industry	Item	2017 Edition
Cultural, sports and entertainment	Culture and entertainment	restricted and joint venture only in which the controlling interest is held by the Chinese party (except for those which provide services in the province or municipality of their locality).	exception has been revised to except those which provide services for the PFTZ province or municipality.
		119 Construction and operation of large- scale theme parks: restricted	Removed

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