



Executive Summary

Two 2019 Negative Lists, one for the piloted free trade zones and one for the rest of the nation were released a day after the China-US trade war shows signs of a cease-fire, and the two lists will enter into force on July 30, 2019.

Seven major industries, including mining industry, manufacturing, transportation, infrastructure, environmental industry, value-added telecommunication as well as cultural entertainment, saw restrictions relaxed or removed.

Since it became a member of WTO in 2001, China has made the commitment to open its domestic market to foreign investors and has taken a series of measures. The Foreign Investment Negative Lists reflects China’s continued willingness to open-up its market by shortening the prohibited or restricted industries for foreign investment.

On last Sunday, June 30, 2019, the National Development and Reform Commission together with the Ministry of Commerce announced the new revisions of China’s Negative lists, including Special Administrative Measures (Negative List) for Foreign Investment Access (2019 Version) (the “2019 National Negative List”) and Special Administrative Measures (Negative List) for Foreign Investment Access in Pilot Free Trade Zones (2019 Version) (the “2019 FTZ Negative List”) (collectively refer to as “2019 Negative Lists), both of which will be effective on July 30, 2019.

Compared to 2018 versions, the number of prohibited or restricted industries in the 2019 Negative Lists has been reduced to 40 (48 in the previous National Negative List) and 37 (45 in the previous FTZ Negative List) respectively.

1. What are the main changes introduced in the 2019 National Negative List?

The 2019 National Negative List will relax or remove administrative restrictions on foreign investment in seven industries, including mining industry, manufacturing, transportation, infrastructure, environmental industry, value-added telecommunication, as well as cultural entertainment.

The main changes compared with previous list are stated below:

Industry	2018 Negative List	2019 Reform
Mining industry	The exploration and development of oil and natural gas ¹ are limited to sino-foreign equity/cooperative joint venture operations.	removed
	It is prohibited to invest in exploration and mining of molybdenum, tin, antimony, and fluorite.	removed
Manufacturing	It is prohibited to invest in the production of Xuan paper and Chinese ink sticks.	removed
Transportation	Domestic shipping agencies must be controlled by the Chinese side.	removed
Infrastructure	Gas and heating supplies in cities with a population of more than half a million must be controlled by the Chinese side.	removed
Environmental industry	It is prohibited to invest in the development of wild animal and plant resources protected by the country that are originating in China	removed
Value-added telecommunication	The ratio of foreign shares of value-added telecom business shall not exceed 50% (except E-commerce)	The ratio of foreign shares of value-added telecom business shall not exceed 50% (except E-commerce, domestic multi-party communication, storage and forwarding, call center)
Cultural entertainment	The construction and operation of the cinemas must be controlled by the Chinese side.	removed
	Performance brokers must be controlled by the Chinese side ² .	removed

On the one hand, the market access has been further eased by direct deleting certain prohibited industries. A good example is that in the manufacturing industry, prohibition on foreign investment in the production of Xuan Paper and ink sticks has been abolished.

On the other hand, certain equity caps have been removed, which will bring more opportunities for foreign companies to enter the market by reducing the direct market access barriers for them. For example, previously, foreign investors are not permitted to establish majority-share controlling or wholly owned cinemas/performance brokers. But under the 2019 Negative Lists, these restrictions are canceled.

2. What are the main changes introduced in the 2019 FTZ Negative List?

2019 FTZ Negative List shall be applied in 12 piloted free trade zones³ and it contains fewer access-limiting measures compared to the 2019 National Negative List to be applied in the rest of the country. In the 2019 FTZ Negative List, the two main lifted restricted industries compared to the 2019 National Negative List are “aquatic products fishing” and “publication printing”, which are also deemed as the testing areas to be further lifted in the National Negative List in the future.

3. How to use the two 2019 Negative Lists?

As stated in our previous newsletters, to ensure domestic and foreign enterprises can compete on a level playing field, since late 2016, a nationwide record-filing system has been adopted gradually in China so that foreign investors enjoy equal treatment and market access with domestic investors, except for prohibited or restricted industries specified in the negative lists. The newly released PRC Foreign Investment Law⁴ re-confirms that China implements pre-establishment national treatment plus a negative list administrative system on foreign investment, which is the formal legal basis for implementing the negative lists.

Thus, for industries that are not listed in the 2019 Negative Lists, it does not mean that foreign investors can access such industries freely, but they will be granted equal treatment to domestic Chinese investors. For example, if any permit is requested for all investors in wine business, regardless foreign or domestic investors, a license shall be obtained first by the investor before conducting the wine business. In practice, in addition to checking the Negative Lists, foreign investors shall also carefully check relevant administrative approvals and licenses that apply to all investors.

<http://www.mofcom.gov.cn/article/b/c/201906/20190602876999.shtml>
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(1) Excluding coalbed methane, oil shale, oil sands, shale gas, etc.
 (2) Included in 2018 FTZ Negative List and expanded to national scope in 2019
 (3) Shanghai, Guangdong, Tianjin, Fujian, Henan, Hubei, Liaoning, Sichuan, Chongqing, Zhejiang, Shaanxi, Hainan.
 (4) <http://asiallians.com/en/foreign-investment-law-foreign-investors-know-landmark-legislation/>

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Should you need more information about 2019 Negative Lists, and/or have inquiries, please do not hesitate to contact us at asiallians@asiallians.com

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