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China's 2024 Revised Negative List for Foreign Investment to take effect on November 1st, 2024

On September 8, 2024, China took a significant step towards further opening its economy to foreign investors with the release of the *2024 edition of the Special Administrative Measures (Negative List) for Foreign Investment Market Access* (in Chinese, "《外商投资准入特别管理措施（负面清单）（2024年版）》", "2024 Negative List") by the National Development and Reform Commission ("NDRC") and the Ministry of Commerce("MOFCOM"). This new list, which will officially come into effect on November 1, 2024, sees a reduction in the number of restrictions from 31 to 29, with a complete lifting of restrictive measures in the manufacturing sector.

Background

The Negative List is a catalog that specifies the industries and sectors where foreign investment is either restricted or prohibited in China. It is part of China's regulatory framework to manage foreign direct investment ("FDI"). The Negative List reflects the country's willingness to open its market while maintaining control over strategic sectors.

The Negative List was officially promulgated on June 28, 2018, and has undergone several revisions since then, including updates in 2019, 2020, 2021, and 2024. With each revision, the list has scaled down the special restrictive measures from 48 to 29, indicating China's commitment to continuously opening its markets to foreign investors.

Special requirements and approval procedures are required where foreign-invested enterprises intend to conduct business in certain sectors. For instance, the proportion of foreign investors in a foreign-invested telecommunications enterprise operating value-added telecommunications services shall ultimately not exceed 50 percent. Such establishment shall be approved by the MIIT("Ministry of Industry and Information Technology") and the NDRC if the investment project falls within the scope of projects with special requirements. Therefore, when applying for a license to operate value-added telecommunications business, a foreign-invested enterprise needs to ensure that the proportion of its foreign capital does not exceed this limit.

See below procedure for establishment of foreign-invested enterprises for certain sectors.

Procedure for establishment of foreign-invested enterprises for certain sectors

In certain sectors such as value-added telecommunications services, additional steps are needed to establish a company:

- Identification of Restricted Sectors:
  Investors must first check if their intended investment sector is listed on the Negative List.
- Preparation of Investment Plan:
  Once the sector is confirmed to be open for FDI, investors prepare a detailed plan outlining their investment strategy.
- Submission of Application (for certain sectors):
  The application, along with the required documentation, is submitted to the relevant Chinese authorities such as the MIIT. the NDRC.
- Review and Approval (for certain sectors):
  The authorities review the application to ensure it complies with the Negative List and other relevant regulations.
- Establishment of Business:
  Upon approval, foreign investors can proceed to establish their business entities in China.
- Ongoing Compliance:
  Even after establishment, foreign investors must ensure continuous compliance with Chinese laws and regulations.

The entire process can vary but generally takes from 3 to 6 months, depending on the complexity of the project, the specific location, and how quickly the necessary documents are prepared and submitted.

Key Revisions in the 2024 Negative List and Their Implications

The 2024 Negative list removes the two remaining restrictions for foreign investment access in the manufacturing sector, specifically:

- The requirement that "For the printing of publications, Chinese investors must have a controlling interest." is deleted.
- The requirement of "Investing in the application of steaming, stir-frying, moxibustion, calcination of Chinese herbal medicines and other processing techniques as well as the production of confidential prescription products of proprietary Chinese medicines shall be prohibited." is also removed.

This marks the complete elimination of restrictions in the manufacturing sector.

Pilot Expansion in Medical Sector

On the same day of issuance of 2024 Negative List, the MOFCOM, the National Health Commission, and the National Medical Products Administration have issued a *Circular on Further Expanding Pilot Programs for Opening Up in the Medical Field* (in Chinese, "《关于在医疗领域开展扩大开放试点工作的通知》（商资函〔2024〕568号）"). This notice is set to allow the establishment of **wholly foreign-owned hospitals** in Beijing, Tianjin, Shanghai, Nanjing, Suzhou, Fuzhou, Guangzhou, Shenzhen, and across Hainan Island, excluding traditional Chinese medicine and acquisitions of public hospitals.

Additionally, foreign-invested enterprises are permitted to engage in the development and application of human stem cell and gene diagnosis and treatment technologies in the China (Beijing) Pilot Free Trade Zone, China (Shanghai) Pilot Free Trade Zone, China (Guangdong) Pilot Free Trade Zone, and Hainan Free Trade Port, for product registration, launch, and production. All products that have been registered and launched, and approved for production can be used nationwide.

These policies are expected to invigorate the medical sector by introducing international standards and practices, potentially enhancing the quality and diversity of medical services available to Chinese patients. The circular noted that the conditions, requirements, and procedures for establishing such hospitals and engaging in the mentioned biotechnological activities will be specified later.

Future Prospects

The 2024 Negative List reflects China's trend to open up the market and attract foreign investment.

For companies looking to grow their presence in China, the 2024 revision of the Negative List for foreign investment presents new opportunities. Although not a drastic change, these updates demonstrate China's ongoing commitment to widely open to foreign investment by lifting restrictions in the manufacturing sector. Businesses should consider revisiting their strategic plans and investigating the fresh prospects in manufacturing, telecommunications, education, and healthcare sectors.

Asiallians will keep you updated.