# Analysis on “The Negative List”: Special Administrative Measures on Access to Foreign Investment 2018

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This article was prepared by LehmanBrown International Accountants.

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## Summary

On June 28 2018, the National Development and Reform Commission (NDRC) and Ministry of Commerce (MOFCOM) jointly announced the release of Special Administrative Measures for Foreign Investment Access (the "nationwide negative list"), which serves as an amendment to the negative list in the Catalogue for the Guidance of Foreign Investment Industries (Revised in 2017) and entered into force from July 28, 2018. The new negative list widens market access for foreign investors in 22 industries, with the number of items included on the list being reduced from 63 to 48. Meanwhile, the Guidance of Foreign Investment Industries is encouraged to carry on.

The negative list of the 2018 edition has been greatly simplified and the process of opening up is being accelerated in many sectors. The liberalization of the service sector, especially the financial sector including banking, securities and insurance, has been greatly boosted. The manufacturing industry has been open to the external investors in all aspects, and the restrictions on the automobile industry have been greatly reduced. Access to agriculture and energy resources has also been relaxed. This revision is aimed at further opening up to external capital and to cultivate a more advantageous business environment for foreign investment.

## 1. Instructions to the Negative List Revision 2018 Version

The negative list 2018 edition has substantially widened market access, as follows:
1. Remove the restriction that the seed selection, breeding and production of new crop varieties excluding wheat and maize must be controlled by Chinese shareholders.
2. Remove the restriction that special and scarce coal exploration and exploitation must be controlled by Chinese shareholders.
3. Remove the restriction on foreign investment access in graphite exploration and exploitation.
4. Remove the restriction that rare earth smelting and separation are only limited to joint venture and cooperation, and remove the restriction on foreign investment access for tungsten smelting.
5. In 2018, the restriction on the proportion of foreign investment in the manufacture of special vehicles and new energy vehicles will be cancelled; in 2020, the restriction on the proportion of foreign investment in commercial vehicles will be cancelled; in 2022, cancel the restriction on the proportion of foreign investment in passenger vehicles and the limitation on the number of joint ventures (no more than two joint ventures).
6. Remove the restriction that the design, manufacture and repair of (parts of) the ships must be controlled by the Chinese shareholders.
7. Remove restrictions on the design, manufacture and maintenance of mainline and feeder aircraft, the design and manufacture of 3-ton and above helicopters, the manufacture of ground and surface effect vehicles, and the design and manufacture of unmanned aerial vehicles and floaters must be controlled by the Chinese shareholders.
8. Remove the restriction that the design, manufacture and maintenance of general aircraft are limited to joint ventures and cooperative ventures.
9. The manufacture of weapons and ammunition is no more included in the negative list.
10. Remove the restriction that the construction and operation of power grid must be controlled by Chinese shareholders.

11. Remove the restriction that the construction and operation of the main railway network must be controlled by the Chinese shareholders.
12. Remove the restriction that railway passenger transport companies must be controlled by Chinese shareholders.
13. Remove the restriction that international maritime transport companies are limited to joint ventures and cooperative ventures.
14. Remove the restriction that international shipping agents must be controlled by Chinese shareholders.
15. Remove the restriction on foreign investment access in the acquisition and wholesale of rice, wheat and maize.
16. Remove the restriction that the construction and operation of chain gas stations with more than 30 branches set up by the same foreign investor, selling different types and brands of refined oil from multiple suppliers must be controlled by the Chinese shareholders.
17. Remove the restriction that the proportion of foreign single shareholding in Chinese banks cannot exceed 20% and the total shareholding cannot exceed 25%.
18. In 2018, the foreign shareholding of securities companies and securities investment fund management companies will be no more than 51%. Restrictions on the proportion of foreign capital in shares shall be cancelled in 2021.
19. In 2018, the futures company will be changed from Chinese holding to that foreign companies can hold no more than 51% shares. Restrictions on the proportion of foreign capital in shares shall be cancelled in 2021.
20. In 2018, the ratio of foreign shares in life insurance companies will be relaxed from 50% to 51%. Restrictions on the proportion of foreign capital in shares shall be cancelled in 2021.
21. Remove the restriction that surveying and mapping companies must be controlled by Chinese shareholders.
22. Remove the regulation on prohibiting foreign investors from investing in Internet service places.

In addition, the negative list of the 2018 edition is tabulated and classified according to the Classification of National Economic Industries (GB/T 4754-2017).

The negative list shows the areas and industries that foreign investors cannot invest in, which is equivalent to the "blacklist" in the investment field, that is, foreign investors are not allowed to invest in the areas prohibited from foreign investment in the Negative List. In recent years, the pace of China's opening-up has been accelerating. With the purpose to expand market access for foreign capital, a series of policy measures, including significantly revising the catalogue of industrial guidelines for foreign investment for the sake of further reducing restrictive measures, have been introduced with positive results.

The negative list of the 2018 edition will open industries in all aspects, covering all the primary, secondary and tertiary industries. Forty-eight special administrative measures have been retained, and the list items have been greatly simplified, which further cut short the procedures of approval for foreign investment and become more conducive to foreign investment. In addition, the timetable and road map for the opening-up of the financial and automotive sectors have been set out, which will enhance the predictability of the opening up so that accelerate the opening up. Furthermore a certain transitional period will be given to the relevant industries and endow them with greater flexibility.

## 2. Liberalization of the Service Industry

This revision of the negative list of foreign investment access will enhance the liberalization of service industry.

Table 1 Service Industry

| Field | Content |
| --- | --- |
| Finance | The restriction on the proportion of foreign capital in the banking sector was cancelled, and the ratio of foreign capital in securities companies, fund management companies, futures companies and life insurance companies was relaxed to 51 per cent. In 2021, the restriction on the proportion of all foreign capital in the financial sector will be cancelled. |
| Infrastructure | Remove the restriction on foreign investment in the railway network and power grids. |
| Transportation | Restrictions on foreign investment in railway passenger transport companies, international maritime transport and international shipping agents have been cancelled. |
| Trade and Business | Restrictions on the purchase and wholesale of petrol stations and grain have been cancelled. |
| Culture | The rules banning investment in Internet services have been cancelled. |

### Overview of Service Industry Development

Since China joined the WTO in 2001, China has actively fulfilled its commitment to open its service trade and gradually opened its service market. According to the white paper of China and the World Trade Organization, of the 160 services sub-sectors under the 12-sector WTO classification, China committed to opening up 100 sub-sectors under 9 sectors, a level approximate to the average 108 sub-sectors committed by the developed members of the WTO.

Evidenced by the white paper of China and the World Trade Organization, China is continuing to reduce restrictions. China has step by step lowered the threshold for foreign investment to enter the services sectors in China, cancelled geographical and quantitative restrictions on services according to schedule, and constantly broadened the business scope for foreign investment in the services sectors. The permission for wholly foreign-owned enterprises has covered 54 sub-sectors including but not limited to courier, banking and property insurance services. The allowance for foreign majority ownership in 23 sub-sectors such as computer and environment services goes into effect, and accorded national treatment is granted to foreign capital in 80 sub-sectors such as telecommunication, rail transport, and tourism services. In 2010, foreign direct investment (FDI) flowing into China's services industry surpassed that into manufacturing industry for the first time. In 2017, FDI in the services industry made up 73 per cent of all FDI in China.

Data from the National Bureau of Statistics shows that in the first half of 2018, the increased value of China's service industry reached nearly 23 trillion yuan, an increase of 7.6% over the same period last year. The service sector accounted for 54.3 per cent of GDP, up 0.2 percentage point year on year. The service sector contributed 60.5 per cent to economic growth, increasing 1.4 per cent year on year. The growth rate of value-added services exceeded that of the secondary industry for 24 consecutive quarters and exceeded that of GDP for 25 consecutive quarters.

In light of the service industry plays a significant role in economic growth, the revision of the negative list has substantially reduced restrictions on foreign investment in the service sector in a number of areas, giving more space for foreign investment to proceed in China which indicates a rare opportunity for foreign investors.

**The Financial Sector Opens Rapidly**

The financial industry takes the decisive place in the service industry. China has constantly improved reform of its financial system and expanded the depth and breadth of financial market opening. Since the end of 2017, China has announced a series of new financial liberalization measures, further lowering the market access threshold and expanding the scope of foreign capital business. These include:

- Liberalize market access restrictions for bank card clearing institutions and non-bank payment institutions, relax restrictions on credit rating services for foreign-funded financial service companies, and implement national treatment for foreign-funded credit reporting institutions;
- Remove restrictions on foreign capital shareholding ratio of banks and financial asset management companies and allow foreign banks to set up branches and subsidiaries simultaneously in China;
- Cancel the requirement of establishing a representative office for two years before the establishment of a foreign insurance company, allow qualified foreign investors to operate insurance agency business and insurance valuation business in China, and open up the business scope of foreign insurance brokerage companies;
- Relax the upper limit of foreign capital shareholding ratio of securities companies, fund management companies, futures companies and personal insurance companies up to 51%, and no restrictions after three years;
- Encourage the introduction of external capital in the banking and financial sectors such as trust, financial leasing, automobile finance, money broking and consumer finance;
- No upper limit on the proportion of foreign capital in financial asset investment companies and financial management companies newly established by commercial banks.

The negative list revisions remove restrictions on the proportion of foreign shares in the banking sector, and the ratio of foreign shares in securities companies, fund management companies, futures companies and life insurance companies is relaxed to 51 per cent. By 2021, all restrictions on that proportion in the financial sector will be cancelled. All the above measures are conducive to the relaxation of foreign enterprise access. The relaxation of the proportion of foreign shares to 51% signifies that foreign investors can gain a controlling position in the joint venture company and even operate a wholly-owned subsidiary in the future. The organization forms of foreign capital entering Chinese financial industry possess greater flexibility, which not only enhances the freedom and activity of foreign companies' operation, but also ensures foreign investors a greater profit margin. The opening of the financial sector provides external investors with more profitable investment opportunities.

The open-up degree of banking sector outstands in the whole financial sector. At present, there is still much room for improvement in the internationalization of China's financial market. Chen Wenhui, vice chairman of the China Bank Insurance Regulatory Commission, said that at the end of 2017, the total assets of foreign banks only account for 1.32 per cent in that of banking sector. Nevertheless, in developed financial markets such as the UK, the US and other BRICS, all the share of foreign banks' assets exceeds 10 per cent. The newly opening-up policy will help attract more external investment and promote steady growth of foreign investment in China.

## 3. Basic Open Manufacturing Industry

The negative list of 2018 version basically liberalized the manufacturing industry.

Table 2 Manufacturing

| Industry | Content |
|---|---|
| Automobile | Remove restrictions on the proportion of foreign shares in special vehicles and new energy vehicles, the proportion of foreign shares in commercial vehicles by 2020, the proportion of foreign shares in passenger vehicles by 2022 and that no more than two joint ventures. |
| Ship | Restrictions on foreign investment will be cancelled, including the design, manufacture and repair of all links. |
| Airplane | Restrictions on foreign investment will be cancelled, including mainline aircraft, regional aircraft, general aircraft, helicopters, unmanned aerial vehicles, and air floaters of all kinds. |

### Overview of Manufacturing Development

Data shows that China's total imports and exports of goods reached 4.1 trillion dollars in 2017, 783 times that of 1978. In the manufacturing sector, 33.5 billion dollars of foreign investment was actually utilized, and foreign direct investment added up to 1201 billion dollars. According to statistics, 4,986 new foreign-invested manufacturing enterprises were set up in China in 2017, an increase of 24.3% over the previous year. The newly revised Catalogue for the Guidance of Foreign Investment Industries (Revised in 2017) has substantially reduced the restrictions on the access to foreign investment. Among the 31 major categories, 179 middle categories and 609 small categories of manufacturing industry, 22 major categories, 167 middle categories and 585 small categories, have been fully open to foreign investment, accounting for 71%, 93.3% and 96.1% respectively.

China's manufacturing sector has been basically opened up, and this tendency will continue to deepen in the future.

### The Prospect of Automobile Industry

In the negative list of 2018 edition, the restrictions on the automobile industry have been greatly reduced, removing restrictions on the proportion of foreign shares in the manufacturing of complete cars for special purpose vehicles and new energy vehicles. This reveals the formal approval of the wholly foreign-owned new energy vehicle enterprises, which is a favourable chance once in a blue moon for external investors.

The national automobile industry enjoys preferential policies, and the restriction on joint venture stock ratio has been in effect for more than 20 years. In the Automobile Industry Policy released by China in 1994, it was proposed that the Chinese proportion of shares in Chinese-foreign joint ventures and cooperative enterprises producing automobile, motorcycle and engine products should not be less than 50% and “foreign enterprises should not establish more than two joint venture enterprises in the same category of vehicle products in China”. Not until 2013 did the ministry of commerce indicate that restrictions on the proportion of shares in the entire vehicle might be cancelled. Since then, various ministries and commissions of the state have pointed out on several occasions that China would gradually liberalize the stock ratio of the entire vehicle in the future.

In June 2017, the National Development and Reform Commission (NDRC) issued the Catalogue for the Guidance of Foreign Investment Industries (Revised in 2017), which explicitly cancelled the restrictions on the number of joint ventures established by foreign investors in China for the production of complete electric vehicle products, as well as the limits on the proportion of foreign investment in automotive power batteries. In the following August, the State Council issued a notice on measures to promote the growth of foreign investment, saying it would further reduce restrictions on foreign investment access. In April 2018, the National Development and Reform Commission (NDRC) issued a news release, drawing up a timetable for the opening up of the proportion of foreign shares in automobiles and new energy vehicles. Those were confirmed in the negative list of 2018.

The lifting of restrictions on the proportion of shares in car joint ventures indicates that foreign car companies can set up auto enterprises in China independently. In the future, the pace of foreign enterprises building factories in China will accelerate, especially in the field of new energy vehicles. The first company to benefit is Tesla. Tesla has struggled to enter the Chinese market because of its insistence on the strategy of building a wholly owned factory, and now the biggest policy hurdle has been removed. At a shareholders' meeting in early June 2018, Tesla unveiled plans to build the world's first overseas manufacturing plant in Shanghai. China is Tesla's biggest customer market, and building a factory directly in China can save a lot of costs, such as transportation costs and some taxes and fees. Consequently, the price of products can be reduced, enhancing Tesla’s competitiveness.

At present, the opening up of the automobile industry is speeding up. In addition to the liberalization of foreign investment restrictions, the State Council Tariff Commission also announced the reduction of automobile import tariffs in May 2018: since July 1, 2018, import duties of vehicle and spare parts have been reduced. The tax rates of 135 tax numbers of 25% and 4 tax numbers of 20% are reduced to 15%; the tax rates of the total 79 tax numbers of auto parts and parts respectively for 8%, 10%, 15%, 20% and 25% are reduced to 6%.

Both the opening up of the ratio of foreign shares and the reduction of the tariff reflect China's market attitude of actively introducing foreign capital and achieving win-win results, which assist foreign capital to enter the Chinese market and obtain greater profits.

## 4. Widen Access to Agriculture and Energy Resources

The negative list of 2018 version has widened the access to agriculture and energy resources.

Table 3 Agriculture & Energy Resources

| Industry | Content |
|---|---|
| Agriculture | Restrictions on foreign investment in the production of seeds excluding wheat and maize have been lifted. |
| Energy | Restrictions on foreign investment in special scarce coal mining have been lifted. |
| Resources | Restrictions on foreign investment in graphite mining, rare earth smelting separation and tungsten smelting have been lifted. |

With regard to the impact of listing revision, relevant scholars have indicated that it will help foreign capital enter the Chinese market. "The cancelling of restrictions on foreign investment access means that foreign enterprises can participate in the acquisition and wholesale of the three main grains in China. For foreign enterprises that have already entered China, they can better develop food processing industry in the future. Meanwhile, it is an investment opportunity for foreign enterprises that have not yet entered China." Li Guoxiang, a researcher at the Rural Development Institute Chinese Academy of Social Sciences, told the International Business Daily that this means China's grain circulation market is basically liberalized. In the future, it may break the monopoly of state-owned grain enterprises and form a diversified market competition for the joint development of state-owned enterprises, private enterprises and foreign-funded enterprises. In the field of energy resources, He Weiwen, a senior research fellow at the Centre for China and Globalization (CCG) and executive director of the China Society for World Trade Organization Studies (CWTO), told the International Business Daily that the expanding the opening of the energy sector in scarce resources shows that China has not imposed export restrictions on scarce resources, which is also in consistent with a series of new policies in recent years.

The revision of the negative list will reduce the cost of foreign investment in China to a certain extent, so as to enhance the competitiveness of foreign enterprises. For example, in the field of agriculture, abolishing the restrictions on foreign purchases of raw grains will reduce the cost of raw materials procurement, and stimulate the vitality of foreign capital. Meanwhile, it will also help to enhance the freedom and transparency of energy market to make it more diversified.

## 5. Conclusion

The Government is continuing to make great strides through this revision to a more unified and transparent market place. The opening of market access covers various sectors, especially the manufacturing sector and the service sector. Besides, the specified timetable enhances the predictability of the opening up and grants more flexibility in different steps. In a nutshell, this revision will provide more investment opportunities in diversified areas for foreign investors to achieve mutual benefit and win-win results in China market on a larger scale. The only caveat is that in some industries the decision making of approvals has been pushed down to Government department levels and local decision makers, and it is hoped that they also share the same thoughts and direction of the central Government in providing approvals to foreign applicants in these newly opening up industries, and providing these in a consistent manner.

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