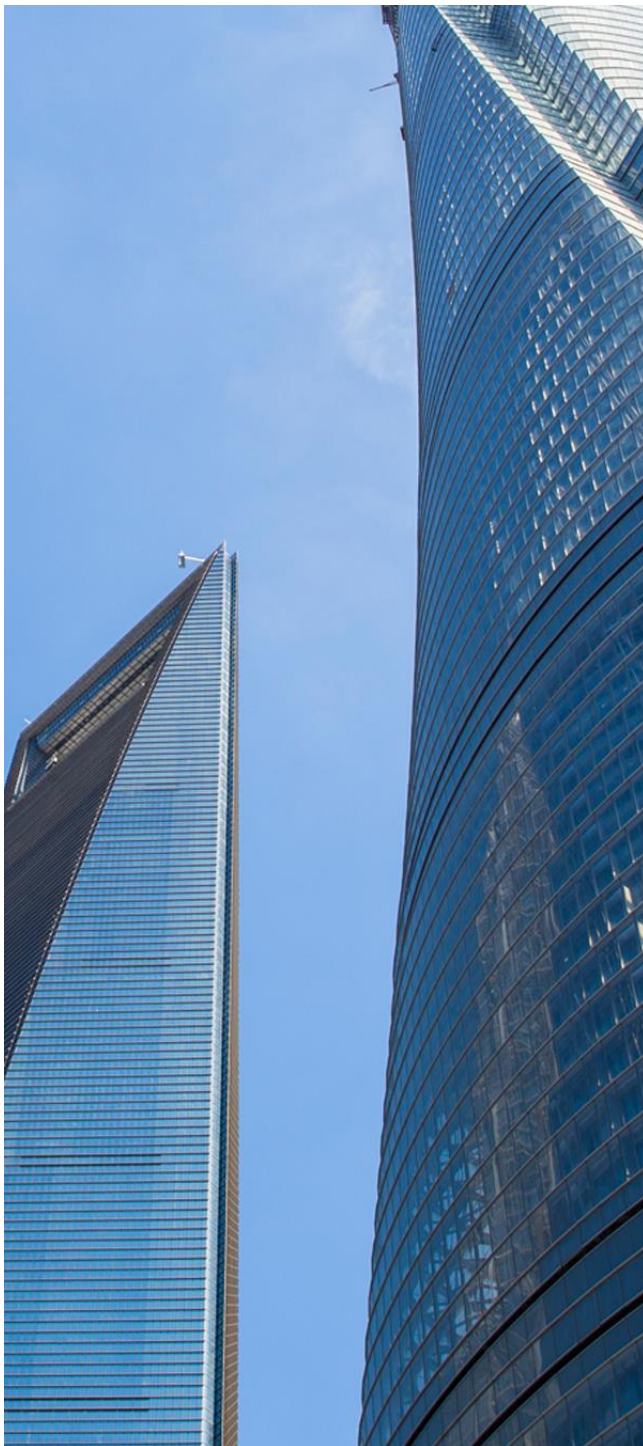


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# The Unified Negative List Regime for Foreign Investment in China

Corporate Legal flash

July 2018



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## Index

On June 28 and June 30, 2018, the Ministry of Commerce (“MOFCOM”) and the National Development and Reform Commission (“NDRC”) jointly released the revised List of Industries with Special Foreign Investment Requirements (Negative List) (2018 Edition) and the revised List of Industries with Special Foreign Investment Requirements in the Pilot Free Trade Zones (Negative List PFTZ) (2018 edition), which will take effect on July 28 and July 30, 2018 respectively.



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## List of Industries with Special Foreign Investment Requirements (Negative List) (2018 Edition): revised and released

On June 28, 2017, the Ministry of Commerce (“MOFCOM”) and the National Development and Reform Commission (“NDRC”) jointly released the revised List of Industries with Special Foreign Investment Requirements (Negative List) (2018 Edition), which will take effect on July 28, 2018. The Negative List from the 2017 edition of the Catalogue for the Guidance of Foreign Investment Industries will become invalid as soon as the 2018 edition is published, while its list of encouraged industries will continue to apply. The Negative List (2018 Edition) classifies the requirements in a table based on the Industrial Classification of National Economic Activities (GB/T 4754-2017).

The Negative List (2018 Edition) reduces the number of items from 63 to 48. It also liberates the shareholding ratio of several restricted items in the following sectors:

- Financial (securities, fund management, futures, and life insurance)
- Infrastructure and transportation
- Manufacturing of automobiles, vessels and aircrafts

Administrative and qualification requirements for foreign investors, as well as national security in the financial and cultural industries, continue to be subject to relevant applicable laws and regulations, which means they are no longer included in the Negative List (2018 edition).

The following items have been removed from the Negative List (and several industries are now open to foreign investors):

- Selection and cultivation of new varieties of crops and production of seeds (except for wheat and corn) (no longer requires Chinese parties to be the controlling shareholders)
- Exploration and exploitation of special and rare kinds of coal (no longer requires Chinese parties to be the controlling shareholders)
- Exploration and exploitation of graphite



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- > Smelting and separation of rare earth (no longer limited to equity/cooperative joint venture operations)
- > Smelting of tungsten
- > Design, manufacture and repair of vessels (including sections) (no longer requires Chinese parties to be the controlling shareholders)
- > Design, manufacture and maintenance of aircraft for trunk and tributary lines; design and manufacture of helicopters at the level of 3 tons or more; manufacture of ground-effect and water-effect aircraft; and design and manufacture of UAV and aerostats (no longer requires Chinese parties to be the controlling shareholders)
- > Design, manufacture and maintenance of general aircraft (no longer limited to equity/cooperative joint venture operations)
- > Construction and operation of power grids (no longer requires Chinese parties to be the controlling shareholders)
- > Construction and operation of trunk railway line networks (no longer requires Chinese parties to be the controlling shareholders)
- > Railway passenger transport companies (no longer requires Chinese parties to be the controlling shareholders)
- > International marine transportation companies (no longer limited to equity or cooperative joint venture operations)
- > Shipping agencies (no longer requires Chinese parties to be the controlling shareholders)
- > Purchase and wholesale of rice, wheat and corn
- > Construction and operation of gas stations (in the case of those having established more than 30 chain gas stations funded by the same foreign investors and selling different varieties and brands of oil products from multiple suppliers, it is no longer necessary for Chinese parties to be the controlling shareholders)



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- Banks (a single foreign investor is no longer restricted to holding a maximum of 20% of a Chinese bank's shares, and multiple foreign investors are no longer restricted to holding a maximum of 25% of a Chinese bank's shares)
- Surveying and mapping companies (no longer requires Chinese parties to be the controlling shareholders)
- Premises providing internet access services for a fee
- Production of radio and television shows and movies (no longer limited to cooperative joint venture operations)

The following items have been opened further to foreign investors and will be opened gradually in the coming years:

- Automakers: except for those manufacturing special vehicles and new energy vehicles, which require at least 50% Chinese parties. A foreign investor is only allowed two joint ventures per vehicle type. In 2020, the restriction on the foreign shareholding ratio will be lifted for commercial vehicle manufacturers. In 2022, this restriction will be lifted for entities that manufacture passenger vehicles, and the limit of two joint ventures per foreign investor will also be removed.
- Securities companies and securities investment fund management companies: the rate of foreign investment must not exceed 51% (previously, Chinese parties had to be the controlling shareholders). This restriction will also be lifted by 2021.
- Futures companies: the percentage of foreign investment must not exceed 51% (previously, Chinese parties had to be the controlling shareholders). This restriction will be lifted by 2021.
- Insurance companies: the percentage of foreign investment must not exceed 51% for life insurance companies (previously 50%). This restriction will be lifted by 2021.

The following have been added to the list of prohibited items:

- Foreigners serving as partners of a domestic law firm
- Investment in religious education institutions



- > Investment in film importation businesses
- > Investment in state-owned cultural relics museums
- > Investment in artistic performance groups

These revisions are in line with the NDRC's previous press conference and President Xi's speech at the Boao Asia Forum and are aimed at opening the financial and manufacturing sectors. However, several industries, including medical institutions and the exploration and exploitation of oil and natural gas, are still restricted to equity or cooperative joint ventures, and foreign investors are still prohibited from investing in several industries, including the express delivery of domestic business mail.

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## List of Industries with Special Foreign Investment Requirements in the Pilot Free Trade Zones (Negative List PFTZ) (2018 Edition): revised and released

On June 30, 2017, MOFCOM and NDRC jointly released the revised List of Industries with Special Foreign Investment Requirements in the Pilot Free Trade Zones (Negative List PFTZ) (2018 edition), which will take effect on July 30, 2018. The Negative List PFTZ (2017 edition) will no longer apply.

The Negative List PFTZ (2018 edition) further reduces the number of items from 95 in 2017 to 45, adopting the same style as the previous list, which will apply to the whole nation, making it comparable among all measures related to different negative lists.

The following items have different restrictions from the above Negative List:

	Negative List (2018 edition)	Negative List PFTZ (2018 edition)
Exploration and exploitation of oil and natural gas (including coal-bed methane, excluding oil shale, oil sands and shale gas)	Restricted to equity or cooperative joint ventures	Removed



	Negative List (2018 edition)	Negative List PFTZ (2018 edition)
Selection and cultivation of new varieties of wheat and corn	Requires Chinese parties to be the controlling shareholders	Requires Chinese parties to hold at least 34% of the shares
Radioactive mineral smelting and processing, and nuclear fuel production	Restricted	Removed
Performance brokerage institutions	Requires Chinese parties to be the controlling shareholders	Removed
Art performance groups	Prohibited	Requires Chinese parties to be the controlling shareholders

In the value-added telecommunications sector, the opening-up measures piloted previously, which were only implemented within the original 28.8 km<sup>2</sup> of the Shanghai PFTZ, will be promoted more extensively to all PFTZs. This will include lifting the foreign shareholding ratio requirement for storage and forward businesses, call center businesses, domestic multi-party communication service businesses, and internet connection services. It will also impose a restriction of foreign shareholding ratio of no more than 50% on investment in domestic internet virtually designated website services.

We hope more pilot liberation will be carried out in PFTZs and then extended nationwide.



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