How to Read China's 2018 Negative List

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China is opening more industries to foreign direct investment, with the release of a new Negative List and associated measures to remove restrictions on foreign investors.

Last week, the National Development and Reform Commission (NDRC) and the Ministry of Commerce (MOFCOM) jointly released new national and **free trade zone** negative lists outlining prohibited and restricted industries for foreign investment.

At the national level, the *Special Administrative Measures on Access to Foreign Investment 2018* ("the Negative List") will replace the previous *Catalogue for the Guidance of Foreign Investment Industries,* which was **revised** at a similar time last year. Set to take effect on July 28, 2018, the Negative List will reduce the number of restrictive measures from 63 in the previous version to 48.

Additionally, the *Special Administrative Measures for Foreign Investment Access to Pilot Free Zones (Negative List)* ("the FTZ Negative List"), which will apply within China's free trade zones, will reduce restrictive measures from 95 in the **previous version** to 45.

Alongside these negative lists, 22 Special Management Measures have also been introduced to highlight the changes made within the revised lists.

Collectively, these measures demonstrate China's continued willingness to gradually open-up its market to foreign investors. However, the opening is not as substantial as some foreign investors had hoped—with many criticizing that the reforms are more symbolic than substantive.

Negative Lists explained

The Negative List is a list of industries in which foreign investment is either prohibited or restricted. The Free Trade Zone Negative List follows the same logic, but is less restrictive than the national list and only applies to China's free trade zones.

For industries not included in the Negative List, foreign investors are given equal treatment to domestic Chinese investments, save for record-filing requirements.

Restricted industries are usually only accessible to foreign investors through **joint venture structures** with Chinese companies and often include shareholding limits. In other cases, foreign investors might need prior approval from MOFCOM to invest in a restricted industry.

Previous investment catalogues also included a list of encouraged industries, which benefit from special incentives such as preferential tax rates. This list, however, is now separate from the Negative List, and a new version has not yet been released.

National Negative List

The 2018 Negative List will immediately relax or remove restrictions on foreign investment in the agriculture, mining, and infrastructure sectors. The finance, insurance, and automobile sectors, meanwhile, will experience more gradual reform, due to the incremental liberalizations effected by the timetable included in the Negative List.

A summary of some of the key opening-up measures for the national Negative List can be found below.

The complete 2018 Negative List can be found **here** (in Chinese).

Summary of Key Changes to the 2018 Negative List

Industry		Details of reform	Year of implementation
1. Agriculture		Removed the equity requirement selecting new crop varieties and the production of seeds (except wheat and maize)	2018
		Removed restrictions on the acquisition and wholesale of rice, wheat and maize	2018
2. Mining		Removed restrictions on the exploitation and exploration of graphite and special/rare coal	2018
		Removed restrictions on the smelting and separation of rare earth and tungsten (although exploration and mining of tungsten still prohibited)	2018
3. Manufacturing	Automotive	Removed the restriction on foreign capital share ratio of special vehicle and new energy vehicle manufacturing	2018
		Will remove the restriction on foreign capital share ratio of commercial vehicle manufacturing	2020
		Will remove restrictions prohibiting a foreign company from setting up more than 2 joint ventures manufacturing the same kind of vehicles in China	2022
	Shipping vessels	Removed restrictions on design, manufacture and repair of ships	2018
	Aviation	Removed restrictions on design, manufacture or maintenance of mainline/ regional aircraft, design and manufacture of helicopters of 3 tones or above, manufacture of surface/surface effects aircraft, design and manufacture of drones/aerostats and design, manufacturing and maintenance of utility aircrafts.	2018
	Weapons	Removed restriction on the manufacturing of weapons and ammunition	2018
4. Infrastructure		Removed restrictions on electricity grid construction and management	2018
		Removed restrictions on foreign investors not being able to establish more than 30 branches of chain petrol stations, and not being able to sell different types of brands of refined oil from multiple suppliers	2018
		Removed restriction on the construction and operation of railway trunk line network and railway passenger transportation companies	2018
5. Transportation		Removed restrictions on international shipping agencies and international maritime transport companies	2018
		Removed restrictions on foreign-invested-to-equity ratio of passenger vehicles	2018
6. Financial Services		Removed restrictions stating that single shareholding must not exceed 20% and total shareholding limit must not exceed 25% on overseas financial institutions investing in Chinese commercial banks	2018
		Changed allowed proportion of foreign investment in securities companies from 50% to 51%	2018
		Will remove restrictions on the proportion of foreign investment in securities companies completely	2021
		Changed the allowed proportion of foreign investment in futures companies from 50% to 51%	2018
		Will remove restrictions on the proportion of foreign investment in futures companies completely	2021
7. Insurance		Changed allowed proportion of foreign investment from 50% to 51%	2018
		Will remove restrictions on the proportion of foreign investment in insurance companies completely	2021
8. Technological Services		Relaxed the restrictions on mapping companies – only specified mapping companies mentioned in negative list still under the control of Chinese parties	2018
		Relaxed the restrictions on internet access companies (not specified by the negative list)	2018
9. Cultural Entertainment		New restriction on investing in performing art groups	2018

Special Administrative Measures on Access to Foreign Investment (Negative List) 2018, Catalogue of Industries for Guiding Foreign Investments (Revision 2017) and EU Chamber of Commerce Comparison Tables

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Free Trade Zone Negative List

The 2018 FTZ Negative List will further reduce restrictions on foreign investment in China's free trade zones by reducing 50 restrictive measures on the list. Additional restrictions removed in the 2018 FTZ Negative List include the following industries:

- Prospecting and exploitation of petroleum and natural gas;
- Aviation manufacturing;
- Wholesale retail of tobacco and cigarettes;
- Legal services;
- Foreign education institutions;
- Smelting and processing of radioactive mineral resources as well as the production of nuclear fuel; and
- Stage performance agencies.

Genuine reform or tentative steps?

This year marks the 40th anniversary of China's opening-up policies. In 2017, the value of foreign direct investment in China was valued at US$136.72 billion — a 7.9 percent increase from the previous year.

In 2011, the number of restrictive measures peaked to include 120 Special Administrative Measures. Since 2011, this figure has seen a steady decline—with 63 restrictive measures recorded in 2017, finally reaching a nadir of 48 in 2018.

The recent 2018 reforms were met with tentative appraisals by most foreign investors, with many stating that it is still too early to tell whether these changes will cause any significant changes.

Other observers are more critical of the tangible effects of these reforms, arguing that the new changes are more cosmetic than practical and only remove restrictions on industries where foreign investment is unlikely.

Kyle Freeman, International Business Advisory Manager at **Dezan Shira & Associates**, said "though the Negative List brings about a certain degree of market access liberalization, some additional licensing or approval requirements may still be required in the newly liberalized sectors, resulting in FDI in these sectors remaining limited, as we have seen in previously liberalized sectors."

On what industries he believes will benefit the most from these new reforms, Freeman commented that he is "cautiously optimistic about the opening-up in the financial, automobile, and agricultural industries — all areas that would benefit from any modern technology and services that foreign investment may bring."

However, Freeman is generally cautious as to whether large and quick liberalization will occur, as some of the industries targeted in the 2018 opening-up reforms fall into one of the following categories: have national security implications; are already dominated by state-owned enterprises; require specialized licenses or approvals; carry high barriers to entry (such as being capital or technology intensive); or incur a high risk from the perspective of a foreign investor.

Nonetheless, these measures, at the very least, demonstrate the Chinese government's willingness to open the door for foreign investments, no matter how small and gradual this opening may be.

As China looks to increase market competition and innovation in its economy, the country should continue its slow but gradual era of market liberalization.

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