

## Update – From July 28, 2017: Opening the Market? China’s 2017 Negative List for Foreign Investment

This is an updated version of our earlier newsletter dated June 30, 2017.

After seeking for comments with a draft on December 7, 2016 (“**Draft**”), on June 28, 2017, China’s National Development and Reform Commission (“**NDRC**”) and the Ministry of Commerce (“**MOFCOM**”) jointly issued the *Catalogue for Guidance of Foreign Invested Industries (2017 Amendment)* (“**2017 Catalogue**”, 《外商投资产业指导目录（2017 修订）》). The 2017 Catalogue became effective on July 28, 2017 and replaced the current 2015 version.

On July 30, 2017, MOFCOM further released the *Interim Administrative Measures on Filing of Incorporation and Change of Foreign-invested Enterprises (2017 revised version)* (“**Filing Measures**”) and an explanatory announcement in relation to the filing of foreign-invested companies.

Major developments:

- In line with the legislative plan, the 2017 Catalogue now officially gives birth to a negative list for foreign investment enterprises (“**FIE**”) in China. The MOFCOM has further made it clear that the negative list in the 2017 Catalogue shall apply outside pilot free trade zones.
- The reform “from approval to filing” in market access control is continued. The MOFCOM filing procedure now also includes many cross-border mergers and acquisitions, where foreign companies buy into Chinese companies’ shares or assets.
- Compared with the 2015 version, the 2017 Catalogue reduces the restricted/prohibited industries from 93 items to 63 items, while keeping the number of encouraged industries basically unchanged.

Below, we highlight some details under the revised law affecting, among others foreign investment in infrastructure, automotive, medical instruments, chemicals, food and agriculture, as well as some high-end manufacturing, and services like banking, telecoms, logistics, credit rating, cultural and research activities.

### 1. New structure – “Encouraged + FIE Negative List”

The 2017 Catalogue officially adopts a new structure. It now consists of two parts:

- a list of all the **encouraged** industries including those with restrictions, and
- the *Foreign Investment Access Negative List* as special access administration measure (colloquially referred to as “**FIE Negative List**”).

The FIE Negative List comprises of general statements, and further sub-parts listing **restricted** and **prohibited** industries for foreign investment in China, plus the **special encouraged** industries with restrictions on management and/or shareholding ratios.

The birth of the FIE Negative List is one further step to the State Council’s goal of managing market access for both foreign and domestic investors with two negative lists starting from 2018:

- one master negative list to regulate market access for both domestic and foreign investment in general; and

- one FIE Negative List (i.e. the 2017 Catalogue for the time being) to additionally regulate aspects affecting solely foreign investment.

This is based on the *Opinions of the State Council on Implementing of the System of Negative List for Market Access* (《国务院关于实行市场准入负面清单制度的意见》) of December 1, 2015 and other related rules.

The *Special Administrative Measures (Negative List) for Foreign Investment Access to Pilot Free Trade Zones* issued by the General Office of the State Council on June 5, 2017, apply to within the Pilot Free Trade Zones as of July 10, 2017.

## 2. Changes proposed by the Draft – all accepted

The 2017 Catalogue officially accepted all changes proposed by the Draft (please refer to our [previous article](#) for details).

Newly added as “Encouraged”	Deleted from “Restricted”
<ul style="list-style-type: none"> <li>• <b>New in infrastructure:</b> construction and operation of city parking facilities.</li> <li>• <b>New for medical instruments:</b> manufacturing of smart first aid medical equipment; remanufacturing of key components of medical imaging equipment.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Less restricted in automotive:</b> company form for manufacturing of “automobile electronic network technology” and “components for the input (sensor and sampling systems) and output (actuators) of electronic control systems, EPS electronic controllers” are not limited to joint ventures anymore.</li> <li>• <b>Less restricted for motorbikes:</b> not limited to two joint ventures within China or share ratios anymore.</li> <li>• <b>Less restricted in logistics:</b> tallying for foreign vessels and highway passenger transport are not restricted anymore.</li> <li>• <b>Less restricted in credit rating:</b> credit checking and rating services are not restricted anymore.</li> </ul>

## 3. Opening up in the high-end manufacturing industries, and introducing filing procedures in M&A

To promote high-end manufacturing, some cutting edge technologies (e.g. VR, AR, 3D printing etc.) have been added beyond the Draft as “encouraged” industries for foreign investment (see below table).

The automobile industry with “clean energy” technology is another winner. For new energy or pure electric cars, the 2017 Catalogue encourages foreign investment in the production of parts, removes the joint venture restrictions for automobile OEMs (note: normal car makers remain subject to share ratio restrictions and the limit of two joint ventures) and also encourages the building of hydrogen refueling stations.

Among certain other transactions, mergers and acquisitions of mainland Chinese companies and assets by foreign investors, as defined in the *Provisions on Merger and Acquisition of Domestic Enterprises by Foreign Investors*, are now generally subject to the simplified MOFCOM filing procedure instead of approval, unless the concerned industries fall in the FIE Negative List or M&A of domestic affiliates by foreign companies established or controlled by domestic entities or individuals. This shall encourage foreign investors and can be seen as a counter-measure to the reduced inflow of foreign investment in recent months.

#### Encouraged industries – key changes in comparison to the Draft (not exhaustive)

Newly added as “Encouraged”	Deleted from “Restricted”
<ul style="list-style-type: none"> <li>• <b>New in VR, AR, 3D printing:</b> research and development (“R&amp;D”), and manufacturing of virtual reality (VR) equipment, augmented reality (AR) equipment, and key parts of 3D printing equipment.</li> <li>• <b>New in food:</b> R&amp;D and manufacturing of formula food for infants, children, or for special medical use purposes.</li> <li>• <b>New in chemicals:</b> manufacturing of nylon 12, and one raw material for synthetic materials.</li> <li>• <b>New in automotive:</b> manufacturing of seven key parts of new energy automobiles (e.g. air compressors); construction and operation of hydrogen refueling stations.</li> <li>• <b>New in environment:</b> manufacturing of hydrologic monitoring sensors.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Less restricted in automotive:</b> makers of pure electric cars are not limited to two joint ventures within China anymore.</li> <li>• <b>Less restricted in agriculture:</b> the construction and operation of large wholesale markets of agricultural products is not restricted anymore.</li> </ul>

#### 4. Caution in the banking, telecom and cultural sectors

The 2017 Catalogue limits the telecom industries to the scope promised under the WTO agreements. Shanghai Free Trade Zone claimed to have exceeded the WTO promises in 2014. One may speculate that less-far reaching position might have resulted from the changed perspective under TPP (Trans-Pacific Partnership)/BIT (Bilateral investment treaties) and possibly a fading interest of China.

The shareholder qualifications in the banking industry are now also specified, enhancing the supervision and regulation of financial institutions.

## Restricted industries – key changes in comparison to the Draft (not exhaustive)

Added as “Restricted” / in the FIE Negative List
<ul style="list-style-type: none"><li>• <b>Limitations for telecoms:</b> limited to those operations promised to be opened under WTO agreements.</li><li>• <b>Limitations for banking:</b> for foreign invested banks (including wholly foreign invested banks, joint ventures or branches of foreign banks): the controlling shareholder(s)/investor(s) must be offshore commercial banks; the non-controlling shareholders can be offshore financial institutions.</li><li>• <b>Limitation for news and cultural services:</b> for purpose of providing such services (including Internet related news and cultural services) within China, the service providers outside the territory of China must comply with prevailing rules regarding approvals, security evaluations, rules on senior management etc.</li></ul>

## 5. The prohibited areas

In comparison to the Draft, the 2017 Catalogue tightens control over some news, media, and cultural related industries as well as research institutions of humanity and social sciences.

## Prohibited industries – key changes in comparison to the Draft (not exhaustive)

Added into the Prohibited / FIE Negative List
<ul style="list-style-type: none"><li>• <b>Prohibited publications:</b> editing of certain publications (e.g. books, newspapers, electric publications remains closed to foreign investors).</li><li>• <b>Prohibited radio/TV/video services:</b> providing Radio/TV/Video services on demand; installing ground facilities to receive satellite TV/radio programs; and the import of radio/TV programs all remain closed.</li><li>• <b>Prohibited news:</b> prohibited news institutions are now defined as “including but not limited to news agencies”; also not allowed for foreign investment are Internet news information services, information publishing/publication service via the Internet.</li><li>• <b>Prohibited research institutions:</b> investment into research institutions of humanity and social sciences remains closed.</li></ul>

The changes reflect the aim to safeguarding and further developing certain ideology. It follows the call of the Communist Party of China for the “three self-confidents” in 2012 when President Xi was elected as the Party leader.



**Ralph Koppitz**  
Partner | Shanghai



**Stephen Wu**  
Senior Associate | Shanghai

Find more articles here:

[Data export controls in China: implications for digital business \(July 18, 2017\)](#)

[New Cyber Security Enforcement Agency \(July 6, 2017\)](#)

[From July 28, 2017: Opening the Market? China's 2017 Negative List for Foreign Investment \(June 30, 2017\)](#)

[MOFCOM Solicits Public Comments on Measures on Filing Administration of Establishment and Change of Foreign-Invested Enterprises \("FIEs"\) \(June 16, 2017\)](#)

[Silent upheaval in the automotive sales in China: the promulgation of new automotive sales measure \(June 2, 2017\)](#)

**Taylor Wessing** is a full service law firm with over 1,200 lawyers in 33 offices in Europe, the Middle East and Asia, including three offices in China (Beijing, Shanghai and Hong Kong). For more information please visit [www.taylorwessing.com](http://www.taylorwessing.com).

*This article is only intended for an exchange of ideas. It shall not constitute any legal advice or analysis by its author(s), Taylor Wessing or any of its partners, members, employees or individuals working for Taylor Wessing. It does not constitute any client relationship of the recipient with Taylor Wessing or any of the aforesaid. Each recipient shall continue to be exclusively liable for his/her own acts and any consequences thereof, and there shall be no recourse to Taylor Wessing or any partner, member or employee of, or individual working for Taylor Wessing based on this article.*

*For any legal advice or other expert opinion on any specific or general matter, please refer to qualified professionals for legal assistance.*

Email to the editor: [shanghai@taylorwessing.com](mailto:shanghai@taylorwessing.com)

In case you do not wish to receive emails in the future, please send an email to [h.song@taylorwessing.com](mailto:h.song@taylorwessing.com)

#### **TAYLOR WESSING PARTNERSCHAFTSGESELLSCHAFT**

von Rechtsanwälten, Steuerberatern, Solicitors und Avocats à la Cour mbB  
Sitz Düsseldorf, AG Essen, PR 1530

#### **TAYLOR WESSING Shanghai Representative Office**

Unit 1509, United Plaza, 1468 Nanjing West Road  
Jing'an District, Shanghai 200040, China

#### **TAYLOR WESSING Beijing Representative Office**

Unit 2307, West Tower, Twin Towers, B-12 Jianguomenwai Avenue  
Chaoyang District, Beijing 100022, China

#### **TAYLOR WESSING Hong Kong**

21st Floor, 8 Queen's Road Central  
Hong Kong, China

Website [www.taylorwessing.com](http://www.taylorwessing.com)

Diese Nachricht (inklusive aller Anhänge) ist vertraulich. Sie darf ausschließlich durch den vorgesehenen Empfänger und Adressaten gelesen, kopiert oder genutzt werden. Sollten Sie diese Nachricht versehentlich erhalten haben, bitten wir, den Absender (durch Antwort-E-Mail) hiervon unverzüglich zu informieren und die Nachricht zu löschen. Jede unerlaubte Nutzung oder Weitergabe des Inhalts dieser Nachricht, sei es vollständig oder teilweise, ist unzulässig. Bitte beachten Sie, dass E-Mail-Nachrichten an den Absender nicht für fristgebundene Mitteilungen geeignet sind. Fristgebundene Mitteilungen sind daher ausschließlich per Post oder per Telefax zu übersenden. Wir sind im Verbund mit unseren nationalen Partnern an den Standorten Amsterdam, Berlin, Bratislava, Brunn, Brüssel, Budapest, Cambridge, Dubai, Düsseldorf, Eindhoven, Frankfurt, Hamburg, Hanoi, Ho Chi Minh City, Hong Kong, Jakarta, Jeddah, Kiew, Klagenfurt, London, London Tech City, München, Paris, Prag, Riad, Singapur, Seoul, Warschau und Wien tätig sowie

mit einer Repräsentanz in New York, Menlo Park, Peking und Shanghai vertreten.

This message (including any attachments) is confidential and may be privileged. It may be read, copied and used only by the intended recipient. If you have received it in error please contact the sender (by return E-Mail) immediately and delete this message. Any unauthorised use or dissemination of this message in whole or in part is strictly prohibited. Please note that, for organisational reasons, the personal E-Mail address of the sender is not available for matters subject to a deadline. Please send, therefore, matters subject to deadline exclusively by mail or by fax. We operate in combination with our national partnership in Amsterdam, Berlin, Bratislava, Brno, Brussels, Budapest, Cambridge, Dubai, Dusseldorf, Eindhoven, Frankfurt, Hamburg, Hanoi, Ho Chi Minh City, Hong Kong, Jakarta, Jeddah, Kiev, Klagenfurt, London, London Tech City, Munich, Paris, Prague, Riyadh, Singapore, Seoul, Warsaw and Vienna and are represented in New York, Menlo Park, Beijing and Shanghai.