

The New Changes of China's Foreign Investment Access Policy in 2022

— Analysis on the latest edition of the Negative Lists for Foreign Investment Access and the similarities and differences between the free trade zone version and the national version on the foreign investment access policy

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Part One Preface

On December 27, 2021, the National Development and Reform Commission and the Ministry of Commerce of China issued the "Special Administrative Measures (Negative List) for Foreign Investment Access (Edition 2021)" and "Special Administrative Measures (Negative List) for Foreign Investment Access in Pilot Free Trade Zones (Edition 2021)". The two negative lists have come into effect since January 1, 2022

In recent years, China has deeply promoted high-level opening up to the world, and has continued to relax foreign investment access. From 2017 to 2020, the Negative List of National and that of Pilot Free Trade Zones has been revised for four consecutive years. Special management measures for foreign investment have been reduced from 93 items and 122 items to 33 items and 30 items respectively. A number of major opening-up measures have been introduced in the fields of finance and automobile. The 2021 edition of the negative lists for foreign investment access has further shortened the length of the negative list, improved the foreign investment management system, and improved the accuracy of negative list management. The new negative lists of the national version and that of the free trade zone version have been further reduced to 31 items and 27 items respectively, and the degree of opening up to the world has been further increased.

Part Two Major Changes in the Negative Lists of Foreign Investment Access

I. New changes shared by the national version and the free trade zone version of the negative list:

1. The manufacturing sector is further opened to the world:

(1) The automobile manufacturing industry is fully open to foreign investment. The previous restrictions on the proportion of foreign shares in automobile manufacturing and that the same foreign company can only establish two or less joint ventures in China to produce similar vehicle products had been removed. That is to say, in the automobile manufacturing industry, foreign investment enjoys the national treatment as same as

domestic investment.

(2) Foreign capital is allowed to enter the industry of production of satellite television broadcasting ground receiving facilities and key components. The item of "Production of satellite television broadcasting ground receiving facilities and key components" has been deleted from the new edition of the negative lists, which means that foreign investors can invest in the above area. That is also for sure that only after completing the relevant application and approval procedures, can foreign investors enter this area, just as same as the domestic enterprises of China.

2. The management of the negative list of foreign investment has been further optimized.

(1) It is clarified that the re-investment in China made by foreign-invested enterprises still belongs to foreign investment. In the new edition of the two negative lists, some content has been added to the "Explanatory Part": "Foreign-invested enterprises investing in China (or in pilot free trade zones) shall comply with the "Negative List of Foreign Investment Access" (or "Negative List of Foreign Investment Access in Free Trade Zones".)". It shows that the re-investment in China made by foreign-invested enterprises is still a kind of foreign investment and shall comply with the relevant provisions of the "Negative List of Foreign Investment Access" or the "Negative List of Foreign Investment Access in Free Trade Zones".

(2) Relevant text has been added to pave the way for the connection between the negative list of foreign investment access and the negative list of market access in the future. Relevant text has been added to the "Explanation Part" of the two negative lists to further emphasized that "Fields outside the negative list shall be managed in accordance with the principle of consistent between domestic and foreign investment, and domestic and foreign investors shall uniformly apply the relevant provisions of the "Market Access Negative List" ." That means that foreign investment enjoy national treatment outside of the negative list.

(3) The accuracy of the negative list for foreign investment has been further improved.

In the Description Part of the negative lists, the following content has been added: "Domestic enterprises, who engaged in businesses in the areas prohibited for investment in the negative list of foreign investment access planning to issue shares and listed overseas shall be reviewed and approved by the relevant state authorities, and foreign investors shall not participate in the management of the enterprise, and their shareholding ratio shall be implemented in accordance with the relevant regulations on the

management of foreign investors investing in domestic securities.” As mentioned at the press conference by a relevant official of the National Development and Reform Commission on the new edition of the negative lists of foreign investment access on December 27, 2021, the supervision of domestic enterprises’ overseas issuance and listing is led by the China Securities Regulatory Commission. After a domestic enterprise submits its overseas listing application materials to the China Securities Regulatory Commission, the China Securities Regulatory Commission will solicit opinions from the competent authorities of the industry or related fields, and advance relevant regulatory procedures in accordance with regulations, if it involves areas prohibited by the negative lists of foreign investment access. The China Securities Regulatory Commission and relevant competent authorities shall, in accordance with regulations, implement precise management of overseas listing and financing of domestic enterprises, who engaged in businesses in areas prohibited by the negative lists.

II. New changes unique to the negative list of the free trade zone version (different from the negative list of the national version):

1. Free trade zones has achieved full opening to the world in the manufacturing industry and achieved consistent management policies between domestic and foreign investment in manufacturing industry .

As mentioned above, the negative list in the national version and the free trade zone version has eliminated the restrictions on foreign capital entering the automobile manufacturing industry and the production of satellite TV broadcasting ground receiving facilities and key parts. Hence, the amount of item in manufacturing sector in the negative list for free trade zones become zero, which means that Free trade zones has achieved "full" opening to the world in manufacturing industry. (In comparison, the manufacturing sector in the national version negative list still contain restriction in two fields: "publication and printing industry shall be controlled by the Chinese party" and "prohibition of investment in the application of steaming, frying, broiling, and calcining of Chinese traditional herbal medicines, as well as the production of confidentiality prescription product of Chinese traditional medicines.")

2. Relaxation of foreign investment in the service industry

(1) In terms of the market research industry, the Negative List of free trade zones version has canceled the restriction that "market research industry shall only be in the form of joint ventures",while, the following restriction still remains: The industry of radio and television listening and viewing surveys shall be controlled by Chinese parties.

(2) In terms of the social survey industry, Free Trade Zone Negative List deleted the prohibition on investment in social surveys. At the same time, it clearly stipulates: "The Chinese party's share ratio in social surveys should not be less than 67%, and the legal representative should have Chinese nationality." That is to say, in free trade zones, foreign investment can enter the field of social investigation, but the share of the Chinese party shall be equal to or greater than 67% and the legal representative shall have Chinese nationality.

Part Three Comparison of the Negative List for Free Trade Zones and the National Negative List

Compared to the national version of negative list, Free trade zones implements a more open foreign investment access policy. Since free trade zones shoulder the mission of the "test field" of reform and opening up, compared with other places of China, Free trade zones has a higher level of opening up to the world. Considering about the new changes in 2020 edition and in 2021 edition of negative lists for free trade zone, free trade zones' more open foreign investment access policies are manifested in the following aspects:

1. In the industries of selection and breeding new varieties of corn and seed production, the national version of negative list requires that "Chinese party shall hold the controlling stake", while the negative list of Free trade zones only requires that "the Chinese shareholding ratio is not less than 34%."

2. In the industry of fisheries, it is stated in the national negative list that "investing in the industry of fishing of aquatic products in the seas and inland waters under the sovereignty of China is prohibited"; however, there is no such restriction in the negative list for Free trade zones, which means that in Free trade zones, foreign investment can enter the industry of fishing of aquatic products in the seas and inland waters under the sovereignty of China.

3. In the publishing and printing industry, the national version of the negative list requires that "the publishing and printing industry shall be controlled by Chinese parties." However, there is no such item in the negative list for free trade zones. That is to say, in Free trade zones, the investment in publishing and printing industry can be controlled or even wholly owned by foreign parties .

4. In terms of the Chinese traditional medicine manufacturing industry, it is stated in the national negative list that "investment in the application of steaming, frying, broiling, and calcining of Chinese traditional medicine decoction pieces and the production of

confidential prescription products of Chinese traditional medicine is prohibited", while, there is no such item in the free trade zone negative list, which means that in Free trade zones, foreign investment can (sole proprietorship or joint venture) enter the above industry.

5. With regard to the entertainment industry, the negative list of the national version states that it is "prohibited to invest in cultural and artistic performance groups." While, in the negative list for free trade zones, it is stated that "The controlling stake of artistic performance groups shall be held by Chinese party.", which means that in Free trade zones, foreign investment may enter artistic performance groups, while the controlling stake shall be held by Chinese party.

6. In terms of the market research area, the restriction that "market research is limited to joint ventures, in which radio and television listening and viewing research shall be controlled by the Chinese party." in the old edition of national negative list is still remained in the new edition of national negative list. While, in the new edition of the negative list for Free trade zones, the restriction that "market investigation is limited to joint ventures" was removed, while at the same time, the restriction that "radio and television listening and viewing research shall be controlled by Chinese parties" was remained. That is to say, hereafter, in Free trade zones, except radio and television listening and viewing research area, in which the Chinese party shall hold a controlling stake, in other areas of market research, foreign investors can invest solely or as a controlling stake.

7. In terms of the social survey industry, the new edition of the Negative List of the National version keep the restriction of "Prohibition of Investment in Social Surveys" stated in the old edition. While the new edition of Free trade zones Negative List deletes this prohibition provision, but at the same time it stipulates: "The Chinese party's share ratio in social surveys should not be less than 67%, and the legal representative shall have Chinese nationality." That is to say, currently, in Free trade zones, foreign investors are allowed to enter the field of social surveys, but the Chinese party's share ratio shall be equal to or greater than 67% and the legal representative shall have Chinese nationality.

Part Four Areas where foreign investment is prohibited to enter

After this latest revision, the number of prohibited items in the negative list of the national version (2021 edition) is still 21, which has not changed; the number of prohibited items in the negative list of the free trade zone version (2021 edition) is reduced by one (i.e. the item of social research industry), the current number is 17. Prohibited areas are mainly in the culture and education area, some scientific research and technical services

industries related to national security, mining and legal services, some industries in the area of agriculture, forestry, animal husbandry and fishery related to food security, and the sales of tobacco products etc.. It can be seen that the areas where foreign investment is prohibited enter are still those involving national security, culture, education and major livelihoods, etc..

Part Five Concluding remarks

In short, the new edition of the two negative lists further "reduce the burden and lose weight" compared to the previous editions, continue to expand and deepen the degree of opening up to the world, improve the foreign investment management system, improve the accuracy of foreign investment management, and reflect China's confidence and determination in further and in-depth implementing the policy of opening up to the world. It is believed that as China's reform and opening up process continues to deepen, China will continue to strengthen the work on foreign investment promotion, protect the legitimate rights and interests of foreign investment, optimize the foreign investment environment, increase the depth and breadth of opening-up, and provide a broader development space for foreign investment.

Part Six Notes

I. Foreign investment in areas outside the negative lists is not free from any restrictions, but will receive the same treatment as other domestic-funded enterprises.

II. This article does not include the evaluation and analysis on the foreign investment access policy of the Hainan Free Trade Port. According to the "Special Administrative Measures for Foreign Investment Access of Hainan Free Trade Port (Negative List) (2020 Edition)", Hainan Free Trade Port is adopting more open foreign investment access policies than other free trade zones in mining, telecommunications, legal services, education and some other fields .

III. Reference materials, documents, and literature in this article:

1. Answering reporters' questions about the 2021 edition negative lists of foreign investment access by the relevant official of the National Development and Reform Commission on December 27, 2021.

2. "Special Administrative Measures (Negative List) for Foreign Investment Access (Edition 2021)" issued by the National Development and Reform Commission and the

Ministry of Commerce of China;

3. "Special Administrative Measures (Negative List) for Foreign Investment Access (Edition 2020)" issued by the National Development and Reform Commission and the Ministry of Commerce of China;

4. "Special Administrative Measures (Negative List) for Foreign Investment Access in Pilot Free Trade Zones (Edition 2021)" issued by the National Development and Reform Commission and the Ministry of Commerce of China;

5. "Special Administrative Measures (Negative List) for Foreign Investment Access in Pilot Free Trade Zones (Edition 2020)" issued by the National Development and Reform Commission and the Ministry of Commerce of China

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