

China Issues 2021 Negative List for Foreign Direct Investment

On 27 December 2021, the Ministry of Commerce (“**MofCom**”) and the National Development and Reform Commission (“**NDRC**”) of the People’s Republic of China (“**PRC**”), with approval from the State Council, published the Negative List for Foreign Direct Investment Industry (2021 version) (“**2021 Negative List**”). The 2021 Negative List will repeal the Negative List for Foreign Direct Investment Industry (2020 version) that was promulgated on 23 June 2020 (“**2020 Negative List**”) and will come into force on 1 January 2022. This update briefly summarises the key differences between the 2020 Negative List and the 2021 Negative List.

Negative List for FDI

Foreign direct investment (“**FDI**”) in the PRC is subject to a Negative List which “prohibits” or “restricts” certain industries for foreign investment purposes. Foreign companies/foreigners are not allowed to invest in “prohibited” industries. Foreign investments in “restricted” industries are subject to more scrutiny, a higher authority approval and will generally take more time to obtain approval as compared to industries that are not on the Negative List. Foreign investments in any industry not listed as “prohibited” or “restricted” on the Negative List will be granted equal access and equal treatment as compared to domestic investments. Before the promulgation of the 2021 Negative List, the latest version of the Negative List was the 2020 Negative List with 33 industries listed as either “prohibited” or “restricted” for FDI purposes.

Major Changes in 2021 Negative List

The 2021 Negative List shortens the 2020 Negative List and only includes 31 industries which are either “restricted” or “prohibited” for FDI purposes. The 2021 Negative List also contains some additional explanatory notes, notably:

1. Foreign-invested enterprises (i.e., PRC companies that have foreign shareholders) are considered foreign parties for FDI purposes and must comply with the Negative List.
2. Domestic enterprises whose businesses fall within the Negative List categories must get approval if they wish to undertake a listing outside the PRC, and foreign shareholdings in these companies may be subject to certain restrictions.

The main changes in the 2021 Negative List are summarised below.

2020 Negative List	2021 Negative List
The Explanatory Notes	
NA	Overseas and domestic investors shall uniformly apply the relevant provisions of the Negative List for Market Access. (Added)
II. The Negative List includes the transitional periods for access restrictions to be cancelled or relaxed in certain fields, at the expiry of which, such restrictions shall be cancelled or relaxed as scheduled.	Removed. This is mainly because the relevant transitional periods committed to WTO by the PRC government have expired.

2020 Negative List	2021 Negative List
NA	III. Foreign-invested enterprises shall comply with the relevant provisions of the Negative Lists for investing in China. (Added)
NA	VI. Overseas IPOs of domestic enterprises engaged in businesses in the areas prohibited for foreign investment as stipulated in the negative lists must be examined and approved by the relevant government departments. Overseas investors shall not participate in the operation and management of these enterprises, and their shareholding ratio shall be governed by reference to the relevant regulations on the management of domestic securities investment by overseas investors. (Added)
The List	
8. For the manufacturing of complete automobiles other than special-purpose vehicles, new energy vehicles, and commercial vehicles, the Chinese party shall have a stake of not less than 50%, and the same foreign investor may establish not more than two equity joint ventures manufacturing the same line of complete automobiles in China. (In 2022, the restriction on foreign stake for the manufacturing of passenger vehicles and the restriction that the same foreign investor may establish not more than two equity joint ventures manufacturing the same line of complete automobiles in China will be cancelled.)	Removed
9. Manufacturing of satellite television broadcast ground receiving facilities and critical components.	Removed

On 27 December 2021, the MofCom and the NDRC also promulgated Decree 48, being a new version of Negative List for FDI in Free Trade Pilot Zones (“**2021 FTPZ Negative List**”). The main changes are summarised as follows:

2020 FTPZ Negative List	2021 FTPZ Negative List
The Explanatory Notes: Substantially the same as the change in 2021 Negative List	
The List	
5. For the manufacturing of complete automobiles other than special-purpose vehicles, new energy vehicles, and commercial vehicles, the Chinese party shall have	Removed

2020 FTPZ Negative List	2021 FTPZ Negative List
a stake of not less than 50%, and the same foreign investor may establish not more than two equity joint ventures manufacturing the same line of complete automobiles in China. (In 2022, the restriction on foreign stake for the manufacturing of passenger vehicles and the restriction that the same foreign investor may establish not more than two equity joint ventures manufacturing the same line of complete automobiles in China will be cancelled.)	
6. Manufacturing of satellite television broadcast ground receiving facilities and critical components.	Removed
16. Market survey shall be restricted to equity joint ventures, and for broadcast media rating services, the Chinese party shall have a controlling stake.	Controlling stake in broadcast media rating services shall be held by the Chinese party. The Chinese party in social survey shall hold no less than 67% of shares and the legal representative shall be a Chinese citizen.
17. Investment in social survey shall be prohibited.	

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