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China publishes the updated negative list to further eliminate barriers for foreign investment in China

On June 23, 2020, the Chinese National Development and Reform Commission and the Chinese Ministry of Commerce issued Decrees No. 32 and No. 33, respectively, promulgating "Special Management Measures for Foreign Investment Access (Negative List) (2020 Version)" and "Special Management Measures for Foreign Investment Access in Foreign Trade in Free Trade Pilot Zones (Negative List) (2020 Version)" (jointly referred to as "2020 Negative List"). The 2020 Negative List will come into effect on July 23, 2020. On that date, the "Special Management Measures for Foreign Investment Access (Negative List) (2019 Version)" and "Special Management Measures for Foreign Investment Access in Foreign Trade in Free Trade Pilot Zones (Negative List) (2019 Version)" (jointly as "2019 Negative List") will simultaneously be abolished.

The 2020 Negative List is the latest supporting document to promote the negative list management system set forth in the People's Republic of China Foreign Investment Law, last amended on March 15, 2019. The Foreign Investment Law set forth the general principle that all foreign investors shall be given the pre-entry national treatment, except those investments on the negative list. The pre-entry national treatment under the Foreign Investment Law refers to the granting of foreign investors and their investments, during the investment admittance stage, the treatment is no less than the treatment of domestic investors and their investments, and provides that all foreign investments outside the negative list will be granted national treatment. The negative list under the Foreign Investment Law refers to special management measures for access to commercial investments in certain specific industries. The negative list is issued or approved by the Chinese State Council. The 2020 Negative List is also consistent with China's commitment in the Phase-One Economic and Trade Agreement between China and the U.S.

The Chinese government has been consistently reducing the industries on the negative list since 2017. China revised the negative list of foreign investment admittances across the country and the Pilot Free Trade Zone for three consecutive years beginning with 2017 through 2019. The restricted industries on the negative list of foreign investment admittances across the country was reduced during those years from 93 to 40, and the restrictive industries on the negative list for foreign investment admittances in the Pilot Free Trade Zone was reduced from 122 to 37. A number of measures have been taken to open up the finance and automotive industries.

The 2020 Negative List has since reduced the restricted industries across the country from 40 to 33 compared with the 2019 Negative List, reflecting a 17.5% reduction, excluding two industries that are partially opened. The 2020 Negative List has additionally reduced the restricted industries in the Pilot Free Trade Zone from 37 to 30 compared with the 2019 Negative List, reflecting an 18.9% reduction, excluding one industry that is partially open.

Specifically, the 2020 Negative List includes the following three major changes:

1. The 2020 Negative List has significantly accelerated the process of opening up key areas in the service industry. In the financial sector, the restrictions on foreign shares of securities companies, securities investment fund management companies, futures companies, and life insurance companies were completely lifted. In the field of infrastructure, the rule that the construction and operation of urban water supply and drainage pipeline networks serving a population of 500,000 or more must be controlled by the Chinese party has been eliminated. In the field of transportation, the regulations prohibiting foreign investment in air traffic control were cancelled, and the regulations on the entry to civil airports were adjusted. The removal of those barriers brings tremendous opportunities for foreign investments to enter the Chinese market in those industries that historically have not been open to foreign investment, and allows foreign investments to compete freely with Chinese domestic companies in those industries.

2. The 2020 Negative List relaxed foreign investment's access in the manufacturing and agriculture industries. In the manufacturing sector, the restrictions on the share ratio of foreign investment in commercial vehicle manufacturing will be lifted, and the regulations prohibiting foreign investment in the smelting, processing and nuclear fuel production of radioactive minerals will be eliminated. In the agricultural field, the rule restricting the selection and breeding of new wheat varieties and the production of seeds to be performed by a company where the Chinese party holds no less than 50% shares has been reduced to require the

Chinese party to hold no less than 34% shares.

3. The 2020 Negative List continued to open pilot programs in the Pilot Free Trade Zone. On the basis of the opening-up measures throughout the country, the Pilot Free Trade Zone will continue to be the first to test various pilot programs. For example, in the field of medicine, the regulations prohibiting foreign investments in Chinese medicine decoction pieces were cancelled. In the field of education, wholly foreign-owned enterprises are allowed to establish vocational educational institutions.

Despite the COVID-19 pandemic and the current U.S. and China tensions, many investors in the U.S. and Europe are already taking advantage of the loosening restrictions on foreign investments in China to enter into the Chinese market. A report issued by two partners at the research firm Rhodiumn Group noted, "Over the past 18 months, we have recorded levels of foreign M&A (mergers and acquisitions) into China that were not seen in the previous decade." A CNBC report further indicates that as global uncertainty escalates, more foreign businesses are buying into China, including deals in the more sensitive industries of finance and technology.

While companies need to engage in strategic analyses in deciding whether to enter into China, the 2020 Negative List brings further opportunities for foreign investment to enter into the Chinese market to access its domestic demand, particularly in the finance, insurance, infrastructure, automotive, manufacturing, agricultural, medicine and education industries, where historically foreign companies had no access or limited access, if those companies decide that entering into the China market is the right move at this moment.

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