****Order of the National Development and Reform Commission of the People's Republic of China and the Ministry of Commerce of the People's Republic of China****

(No.47)

    The Special Administrative Measures (Negative List) for the Access of Foreign Investment (2021), as deliberated and approved at the 18th executive meeting of the National Development and Reform Commission and examined and signed by the Ministry of Commerce on September 18, 2021, as approved by the CPC Central Committee and the State Council, are hereby issued, with effect from January 1, 2022,

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****Special Administrative Measures (Negative List) for the Access of Foreign Investment (2021)****

Explanations

****I****. The Special Administrative Measures (Negative List) for the Access of Foreign Investment (hereinafter referred to as the "Negative List") uniformly set forth the ownership requirements, requirements for senior executives, and other special administrative measures for the access of foreign investment. Fields not on the Negative List shall be administered under the principle of equal treatment to both domestic and foreign investment. The relevant provisions of the Market Access Negative List shall uniformly apply to domestic and overseas investors.

****II****. An overseas investor may not engage in investment or operation as an individual industrial and commercial household, proprietorship investor, or member of a specialized farmers' cooperative.

****III****. A foreign-invested enterprise's investment in China shall comply with the relevant provisions of the Negative List.

****IV****. Where an overseas investor intends to invest in a field on the Negative List but fails to comply with the provisions of the Negative List, the appropriate department shall, in the process of performing its duties in accordance with the law, decline to handle any matter concerning licensing and enterprise registration, among others, and any matter concerning confirmation if the confirmation of a fixed investment project is involved. For investment in a field subject to ownership requirements, no foreign-funded partnership may be established.

****V****. Upon examination by the appropriate department of the State Council, submission by it to the State Council for approval, and approval by the State Council, a specific foreign investment may be exempt from the provisions of the Negative List on the relevant field.

****VI****. A domestic enterprise engaged in business in a field in which investment is prohibited by the Negative List may offer shares and be listed for trading overseas, subject to the examination and approval of the appropriate department of the state; an overseas investor shall not participate in the operations and management of the enterprise, and its stake shall be subject to the relevant provisions on the administration of domestic securities investment by overseas investors.

****VII****. Where a domestic company, enterprise, or natural person acquires by merger any domestic company having affiliation thereto through a company legally established or controlled overseas by the domestic company, enterprise, or natural person, the provisions on inbound and outbound investment and foreign exchange administration, among others, shall apply.

****VIII****. Measures relating to administrative approval, qualification conditions, and national security, among others, in culture, finance, and other fields shall, if not on the Negative List, be governed by the provisions currently in force.

****IX****. The Mainland and Hong Kong Closer Economic Partnership Arrangement and its supplementary agreements, the Mainland and Macao Closer Economic Partnership Arrangement and its supplementary agreements, the Cross-Straits Economic Cooperation Framework Agreement and its supplementary agreements, and the international treaties and agreements concluded or acceded to by China shall apply, if they have more favorable provisions on the access treatment of overseas investors. If a pilot free trade zone or any other special economic zone provides any more favorable opening measures for qualified investors, the relevant provisions shall apply.

****X****. The Negative List shall be subject to interpretation by the National Development and Reform Commission and the Ministry of Commerce in conjunction with relevant departments.

****XI****. The Negative List of 2020 issued by the National Development and Reform Commission and the Ministry of Commerce on June 23, 2020 shall be repealed on January 1, 2022.

****Special Administrative Measures (Negative List) for the Access of Foreign Investment (2021)****

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| SN | Special Administrative Measures |
| I. Agriculture, forestry, animal husbandry, and fishing |
| 1 | The Chinese party shall have a stake of not less than 34%, in the case of selection and cultivation of new wheat varieties or production of seeds, or a controlling stake, in the case of selection and cultivation of new corn varieties or production of seeds. |
| 2 | Investment in the research, development, and raising or cultivation of any valuable or fine variety which is rare and peculiar to China or the production of relevant propagation materials (including fine genes in planting, animal husbandry, or aquaculture) shall be prohibited. |
| 3 | Investment in the selection and cultivation of a genetically modified variety of any crop, breeding stock, or broodstock or the production of genetically modified seeds (offspring) of it shall be prohibited. |
| 4 | Investment in the harvesting of aquatic products in the territorial waters or inland waters of China shall be prohibited. |
| II. Mining |
| 5 | Investment in the exploration, mining, or beneficiating of rare earth, radioactive minerals, and tungsten shall be prohibited. |
| III. Manufacturing |
| 6 | For printing of publications, the Chinese party shall have a controlling stake. |
| 7 | Investment in the application of steaming, frying, roasting, calcining, or other processing technology for prepared Chinese medicinal herb slices or the manufacturing of patented traditional Chinese medicine based on a classified formula shall be prohibited. |
| IV. Electric power, heat, gas, and water generation and supply |
| 8 | For the building or operation of a nuclear electric power plant, the Chinese party shall have a controlling stake. |
| V. Wholesale trade and retail trade |
| 9 | Investment in the wholesale or retail trade in leaf tobacco, cigarettes, redried tobacco, or any other tobacco products shall be prohibited. |
| VI. Transportation, warehousing, and postal service |
| 10 | The Chinese party shall have a controlling stake in a domestic water transportation company. |
| 11 | The Chinese party shall have a controlling stake in a public air transportation company, in which the investment of a foreign investor and its affiliate(s) shall not exceed 25% and whose legal representative shall be a Chinese citizen. The legal representative of a general aviation company shall be a Chinese citizen, general aviation companies for agriculture, forestry, or fishing shall be restricted to equity joint ventures, and the Chinese party shall have a controlling stake in a general aviation company for any other field. |
| 12 | For the building or operation of a civil airport, the Chinese party shall have a relatively controlling stake. A foreign party shall not participate in the construction and operation of an air traffic control tower. |
| 13 | Investment in a post company or domestic express mail delivery services shall be prohibited. |
| VII. Information transmission, software, and information technology service |
| 14 | Telecommunications carriers: limited to the opening of telecommunications services in the commitments made by China upon WTO accession. The foreign stake in a value-added telecommunications service may not exceed 50% (except e-commerce, domestic conferencing, store-and-forward, and call center services), and the Chinese party shall have a controlling stake in basic telecommunications. |
| 15 | Investment in Internet news information services, Internet publication services, Internet video and audio program services, Internet cultural business (except music), and Internet social networking services (save the part of such services already opening up in the commitments of China made upon WTO accession) shall be prohibited. |