

# China's Government Issues Foreign Investment Industry Guidance Catalogue (2017 Version)

July 27, 2017

On June 28, 2017, the National Development and Reform Commission (NDRC) and the Ministry of Commerce (MOFCOM) of the People's Republic of China (PRC) jointly issued the Foreign Investment Industry Guidance Catalogue (2017 Version) (the 2017 Catalogue) to supersede the Foreign Investment Industry Guidance Catalogue (2015 Version) (the 2015 Catalogue). The 2017 Catalogue will become effective on July 28, 2017.

## Background

The first Foreign Investment Industry Guidance Catalogue was promulgated by the NDRC and MOFCOM on June 20, 1995. Since its first promulgation, the Foreign Investment Industry Guidance Catalogue has gone through seven revisions. Under the Foreign Investment Industry Guidance Catalogue, industrial sectors are divided into three categories: encouraged, restricted and prohibited. Foreign investors are encouraged to invest in encouraged sectors and prohibited to invest in prohibited sectors. Foreign investors are allowed to invest in restricted sectors but need to comply with certain restrictions such as ownership limits and special approvals. Industrial sectors that are not listed in the Foreign Investment Industry Guidance Catalogue are permitted sectors in which foreign investors are allowed to invest without restrictions, but no special benefits to encourage foreign investment are available.

## Summary of the major changes under 2017 Catalogue

1. **Introduction of "Encouraged List" and "Negative List" Structure.** The 2017 Catalogue adopts a new structure that consists of two parts: (i) a list of the encouraged sectors and (ii) the Foreign Investment Access Negative List (the Negative List). The Negative List consists of (i) the "Restricted Category", (ii) the "Prohibited Category" and (iii) the encouraged sectors that are subject to limitation of shareholding structure or other specific restrictions under the earlier versions of the Foreign Investment Industry Guidance Catalogue.  
Pursuant to the applicable PRC laws, foreign investment in a project that is not on the Negative List only requires filing with the relevant authorities, while foreign investment in a project on the Negative List requires approval by the relevant authorities and may be subject to other specific restrictions. This principle applies to foreign investment through the establishment of a new entity or through the acquisition of an existing Chinese entity, with one exception noted below. In the case where a Chinese individual or a Chinese enterprise uses his or its controlled offshore entity to acquire a domestic affiliate, it is still subject to the approval requirement even if the domestic affiliate does not engage in business on the Negative List.
2. **New Market Access Opportunities.** The 2017 Catalogue adds a few new sectors to the list of encouraged sectors. These sectors include, for example, (i) research, development and manufacturing of virtual reality (VR) and augmented reality (AR) devices, (ii) research, development and manufacturing of key components of 3D printing devices, (iii) manufacturing of intelligent emergency medical rescue equipment, (iv) construction and operation of urban parking facilities, and (v) formulated food for special medical use. In addition, the 2017 Catalogue relaxes certain restrictions on the investment in a number of sectors, e.g., removing the shareholding limitation for foreign investors in automobile electronic network technology and EPS electronic controllers, removing the nationality requirement for the chief partner in accounting and auditing, removing limitation on the number of joint ventures established by a foreign investor in the manufacture of electric automobiles sector, and changing investment in credit investigation and rating service from a "restricted sector" to a "permitted sector."
3. **New Market Access Prohibitions.** Some sectors were added to the 2017 Catalogue as "prohibited" sectors. These sectors include, for example, (i) land-based mobile mapping, (ii) editing of books, newspapers and periodicals, (iii) editing of audiovisual products and electronic publications, (iv) broadcast/TV video on-demand service and installation of ground receiving facilities for satellite television and broadcasting, and (v) services for public release of information via Internet.
4. **Removal of Classifications Applying to both Domestic and Foreign Investments.** Note that the sectors in

which the domestic investment and foreign investment would receive the same treatment were removed from the 2017 Catalogue. Such sectors include, for example, the operation of theme parks, the construction of golf courses and the gaming industry. Therefore, when determining whether foreign investment in an industry is encouraged, restricted or prohibited, the 2017 Catalogue is not the only place to check.

## Conclusion

The PRC government has been trying to implement a series of measures to further open up certain sectors of the Chinese economy to foreign investment and facilitate foreign direct investment. The implementation of the 2017 Catalogue is part of such efforts.

Notwithstanding the Chinese government's efforts to open up more sectors for foreign investment, we would like to note that certain sectors, which are of interest to Cooley's clients, remain prohibited or restricted under the 2017 Catalogue. For example, (i) the technology development and application of human stem cells and genetic diagnosis and therapy remains a "prohibited sector" under the Negative List, and (ii) the value-added telecommunication business (except for ecommerce) remains as a "restricted project" subject to the shareholding limitation under the Negative List. It is further reiterated in the 2017 Catalogue that telecommunication business is accessible to foreign investment only to the extent of China's commitment to the World Trade Organization.

We believe that the Chinese government will continue to open up more sectors to foreign investment, but sectors that present national security concerns will continue to be prohibited or restricted for foreign investment. We will continue to monitor any further developments in this regard and provide updates as appropriate.

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