

## China set to further relax market entry for foreign investors

— — *recent promulgations revealed a more open market by further shortening of negative lists and expanding applicable scope of encouraged industries for foreign investments*

In response to President Xi's declaration at the 2019 G20 summit, on 30 June 2019, the Chinese government released the 2019 Negative List and the 2019 PFTZ Negative List, to shorten the industry list that foreign investments are prohibited/restricted. In addition, the 2019 Catalogue of Encouraged Industries for Foreign Investment was also released at the same time, with an expanded applicable scope. The two lists and the catalogue will become effective on 30 July 2019.

### Overview

Chinese President Xi Jinping announced five major initiatives for a new round of opening up at the 2019 G20 summit on June 28<sup>th</sup>, to further relax China's markets entry and continuously improve the openness of the business environment. The industrial areas mentioned to be further opened include agriculture, mining, manufacturing and service sectors. President Xi also added that restrictions on foreign investment (currently under a specific Negative list) will be further lifted.

China has been translating the G20 commitment into action. In response to President Xi's declaration, on 30 June 2019, the National Development and Reform Commission (NDRC) and the Ministry of Commerce (MOFCOM) jointly released the 2019 Negative List<sup>1</sup> and the 2019 Free Trade Zones (PFTZ) Negative List<sup>2</sup>, to shorten the industry list that foreign investments are prohibited/restricted. In addition, the 2019 Catalogue of Encouraged Industries for Foreign Investment (2019 Catalogue)<sup>3</sup> was also released at the same time, with an expanded applicable scope. The two lists and the catalogue will become effective on 30 July 2019<sup>4</sup>.

Note:

1. Special Administrative Measures on Foreign Investment Access (Negative List) (2019 Version)  
[http://www.ndrc.gov.cn/zcfb/zcfbl/201906/t20190628\\_940274.html](http://www.ndrc.gov.cn/zcfb/zcfbl/201906/t20190628_940274.html)

2. Special Administrative Measures on Foreign Investment Access to Pilot Free Trade Zones (Negative List) (2019 Version)  
[http://www.ndrc.gov.cn/zcfb/zcfbl/201906/t20190628\\_940275.html](http://www.ndrc.gov.cn/zcfb/zcfbl/201906/t20190628_940275.html)

3. Catalogue of Encouraged Industries for Foreign Investment (2019 Version)  
[http://www.ndrc.gov.cn/zcfb/zcfbl/201906/t20190628\\_940276.html](http://www.ndrc.gov.cn/zcfb/zcfbl/201906/t20190628_940276.html)

4. NDRC/MOFCOM Orders [2019] No. 25, 26 and 27, respectively

The encouraging catalogue and the negative lists can be viewed as “positive” and “negative” administrative measures respectively applicable to foreign investment entering into the China market:

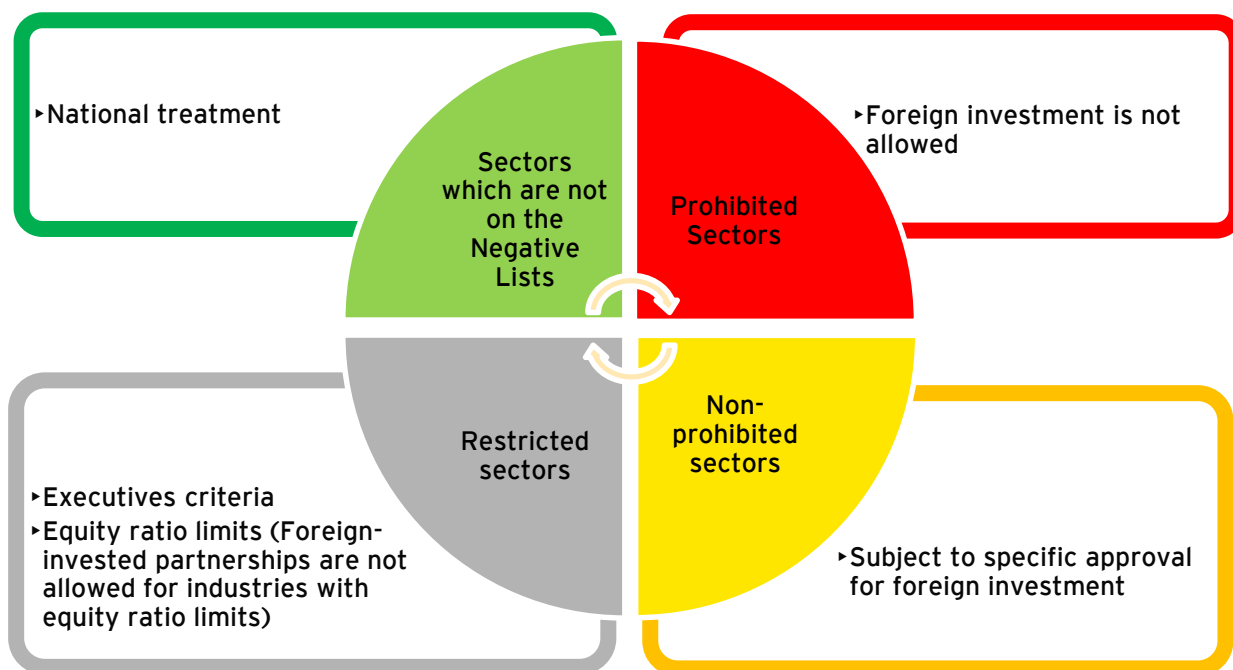
- ▶ “Positive” - 2019 Catalogue lists the encouraged industries for foreign investment which are qualifying for prevailing applicable preferential policies. The revised 2019 Catalogue further expands the scope of encouraged industries, promoting foreign investment to participate in the sectors of modern agriculture, advanced manufacturing, high-and-new technology, energy conservation and environmental protection, as well as modern service. The 2019 Catalogue includes two sub-catalogues: a nationwide catalogue (National Catalogue) and a catalogue for central and western regions (CWR Catalogue).
- ▶ “Negative” - The Negative List was firstly introduced in China in 2017 as a foreign investment industrial scope under special administrative measures for controlling the China market entry. It specifies the industries which are subject to prohibition and restrictions for foreign investment (e.g., share ratio, criteria for enterprise executives, limited enterprise forms). For industries which are not covered in the Negative List, there is no restriction specifically applicable to foreign investments (i.e., they are subject to same market access requirements as domestic investors). The 2019 Negative List applies across the nation, whilst the 2019 PFTZ Negative List is specifically for the pilot free trade zones. China has revised the Negative list in 2018. The 2019 revisions have shortened the general list without imposing any new restrictions on any sector.

Under the current economy, the shrunk “negatives” list and the expanded “positive” scope jointly reaffirms China's commitment on further opening up. It indicates its efforts for remaining competitive as one of the largest investment destinations.

## Shortened Negative List

The Foreign Investment Law to be brought into effect on 1 January 2020 (officially passed in March 2019), clarifies the basic administrative controlling system for foreign investment entering the China market, i.e., pre-establishment national treatment plus negative lists .

*Figure 1 - The general underrating of the Negative Lists*



## ► Newly relaxed sectors in 2019 Negative List

China has continuously expressed its determination to further promote inbound foreign investment. 2019 Negative List further relaxes the previous restrictions on manufacturing, mining, agriculture and service industries covering transportation, value-added telecommunications, infrastructure and culture sectors. It also allows more areas for foreign-controlled companies and WFOE (wholly foreign owned enterprises). Further, 2019 Negative List does not impose any new restriction on any sector.

Sectors under 2019 Negative List are reduced to 40 from previous 48 listed in 2018 Negative List. The related areas include:

**Table 1. Newly relaxed areas in 2019 Negative List**

From 48 to 40 - relaxed areas		
Industries	2018 Negative List	2019 Negative List
Culture, sports & entertainment	<ul style="list-style-type: none"> <li>► Cinema construction and operation: the controlling interest must be held by Chinese companies</li> <li>► Performance agencies: the controlling interest must be held by Chinese companies</li> </ul>	Removed
Mining	<ul style="list-style-type: none"> <li>► Exploration/mining of oil and natural gas: limited to equity joint ventures or cooperative joint ventures only</li> <li>► Foreign investment in exploration and mining of molybdenum, tin, antimony and fluorite: prohibited</li> </ul>	Removed
Manufacturing	<ul style="list-style-type: none"> <li>► Foreign investment in rice-based paper and ink ingot producing: prohibited</li> </ul>	Removed
Production & supply of electricity, heat, gas and water	<ul style="list-style-type: none"> <li>► Gas and heat pipe networks for cities with a population of 500,000 or more: the controlling interest must be held by Chinese companies</li> </ul>	Removed
Transportation, warehousing & postal services	<ul style="list-style-type: none"> <li>► Domestic shipping agency: the controlling interest must be held by Chinese companies</li> </ul>	Removed
Information transmission, software and information technology services	<ul style="list-style-type: none"> <li>► Foreign investment in domestic multi-party communication service, store-and-forward, and call center business: restricted</li> </ul>	Removed
Water conservancy, environment and public facilities management	<ul style="list-style-type: none"> <li>► Development of wildlife (including both animals and plants) resources: prohibited</li> </ul>	Removed

## ► Major changes in 2019 PFTZ Negative List

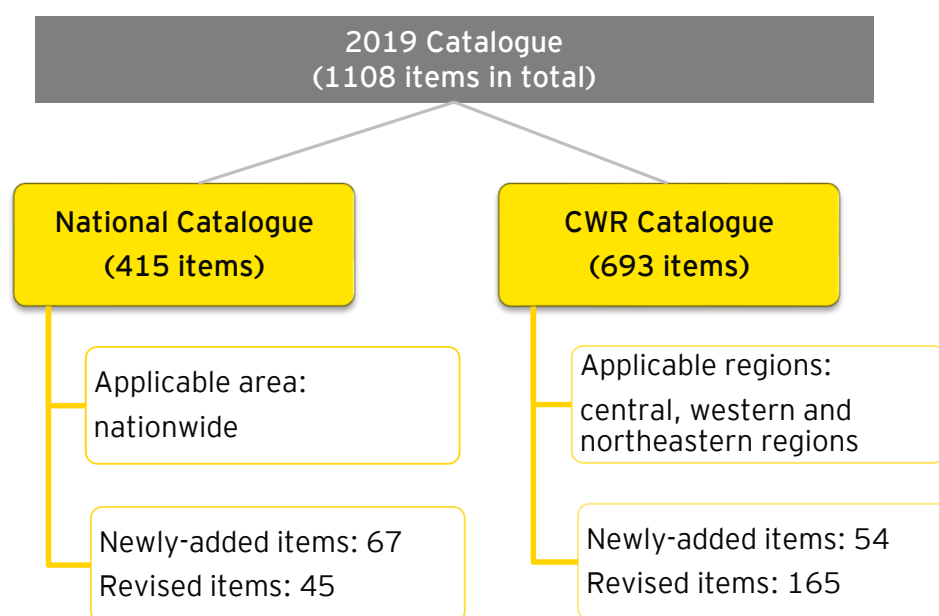
The PFTZ Negative List applies to investments in all PFTZs, which plays a pioneering role in China's market opening up policies. For example, restrictions on performance agency institutions, exploration and mining of oil and natural gas have been removed from 2018 PFTZ Negative list before being rolled out nationwide in the 2019 revisions. Items in 2019 PFTZ Negative List are reduced to 37 from previous 45 in 2018.

More sectors that are subject to certain restrictions for foreign investments such as fishing and publishing are removed in 2019 PFTZ Negative list as a pilot move. Again, it is worth noting that the PFTZ Negative List applies only to investments in PFTZs.

## Expanded applicable scope for encouraged industries of foreign investments

The 2019 Catalogue consists of two sub-catalogues, one for nationwide (the National Catalogue) and the other one particularly focuses on central, western and northeastern regions. The number of encouraged items in the 2019 Catalogue has increased significantly from its last revision in 2017.

Figure 2 - overview of 2019 Catalogue



It is worth noting that although the catalogue for selected areas is named as Central and Western Region Catalogue (CWR Catalogue), it also covers China northeastern regions in addition to central and western regions. The detailed coverage of respective regions is<sup>5</sup>:

- **Western region:** Chongqing, Gansu, Guangxi, Guizhou, Inner Mongolia, Ningxia, Qinghai, Shaanxi, Sichuan, Tibet, Xinjiang, Yunnan
- **Central region:** Anhui, Hainan, Henan, Hubei, Hunan, Jiangxi, Shanxi
- **Northeastern region:** Heilongjiang, Jilin, Liaoning

Note:

5. The areas are allocated in accordance with designated areas for related applicable incentives, instead of under a strict geographic context

## ► The main changes of 2019 Catalogue

**National Catalogue:** Over 80% of the revisions made to the National Catalogue covers the manufacturing sector. Foreign investors are encouraged to invest more in high-end, intelligent and green manufacturing industries.

**CWR Catalogue:** it further expands the scope of encouraged industries by including labor-intensive, advanced technology industries as well as related supporting industrial sectors, aiming to give the designated regions more effective support to strive for industrial transfer of foreign investments.

*Table 2. Major changes in the 2019 Catalogue (including but not limited to):*

National Catalogue		
Sectors	Industries/Fields	Newly-added / revised items
Manufacturing sector	Electronic information industry	<ul style="list-style-type: none"> <li>► 5G core components</li> <li>► Etching machines for integrated circuits</li> <li>► Chip packaging equipment and cloud computing equipment</li> </ul>
	Equipment manufacturing industry	<ul style="list-style-type: none"> <li>► Industrial robots</li> <li>► Key components of new energy vehicles and smart cars</li> </ul>
	Modern pharmaceutical industry	<ul style="list-style-type: none"> <li>► Key raw materials of cell-based therapeutic drugs</li> <li>► Large-scale cell cultivating products</li> </ul>
	New materials industry	<ul style="list-style-type: none"> <li>► Aerospace new materials</li> <li>► Monocrystalline silicon</li> <li>► Large silicon wafers</li> </ul>
Producer service sector	Business Services	<ul style="list-style-type: none"> <li>► Engineering consulting service</li> <li>► Accounting service</li> <li>► Taxation related service</li> <li>► Inspection, testing and certification service</li> </ul>
	Trade and Circulation	<ul style="list-style-type: none"> <li>► Cold-chain logistics</li> <li>► E-commerce business</li> <li>► Special railway lines</li> </ul>
	Technical services	<ul style="list-style-type: none"> <li>► Artificial intelligence</li> <li>► Cleaner production</li> <li>► Carbon capture</li> <li>► Recycling economy</li> </ul>
CWR Catalogue		
Provinces with revisions	Regional development characteristics	Newly-added / revised items
Yunnan, Inner Mongolia, Hunan	<ul style="list-style-type: none"> <li>► Unique agricultural resources</li> <li>► Labor force advantageous</li> </ul>	<ul style="list-style-type: none"> <li>► Agricultural products processing</li> <li>► Textile, clothing</li> <li>► Furniture manufacturing</li> </ul>
Anhui, Sichuan, Shaanxi	<ul style="list-style-type: none"> <li>► Experiencing accelerated development of electronic industry clusters</li> </ul>	<ul style="list-style-type: none"> <li>► General integrated circuit</li> <li>► Tablet computers</li> <li>► Communication terminals</li> </ul>
Henan, Hunan	<ul style="list-style-type: none"> <li>► Intensive transportation and logistics networks</li> </ul>	<ul style="list-style-type: none"> <li>► Logistics storage facilities</li> <li>► CNG stations</li> </ul>



## ► Applicable incentives for encouraged industries for foreign investment

Encouraged foreign invested projects are entitled to enjoy applicable preferential tax treatments and other relevant incentives. The 2019 Catalogue further expands the scope of encouraged foreign investment industries, which implies that more foreign investment projects are eligible for incentives. It is worth noting that, unless further policy published, the preferential tax policies that can be enjoyed by qualified foreign investment enterprises (FIEs) that invest in encouraged industries remain unchanged.

**Table 3. The key incentives applicable to FIEs engaging in encouraged industries in respective areas**

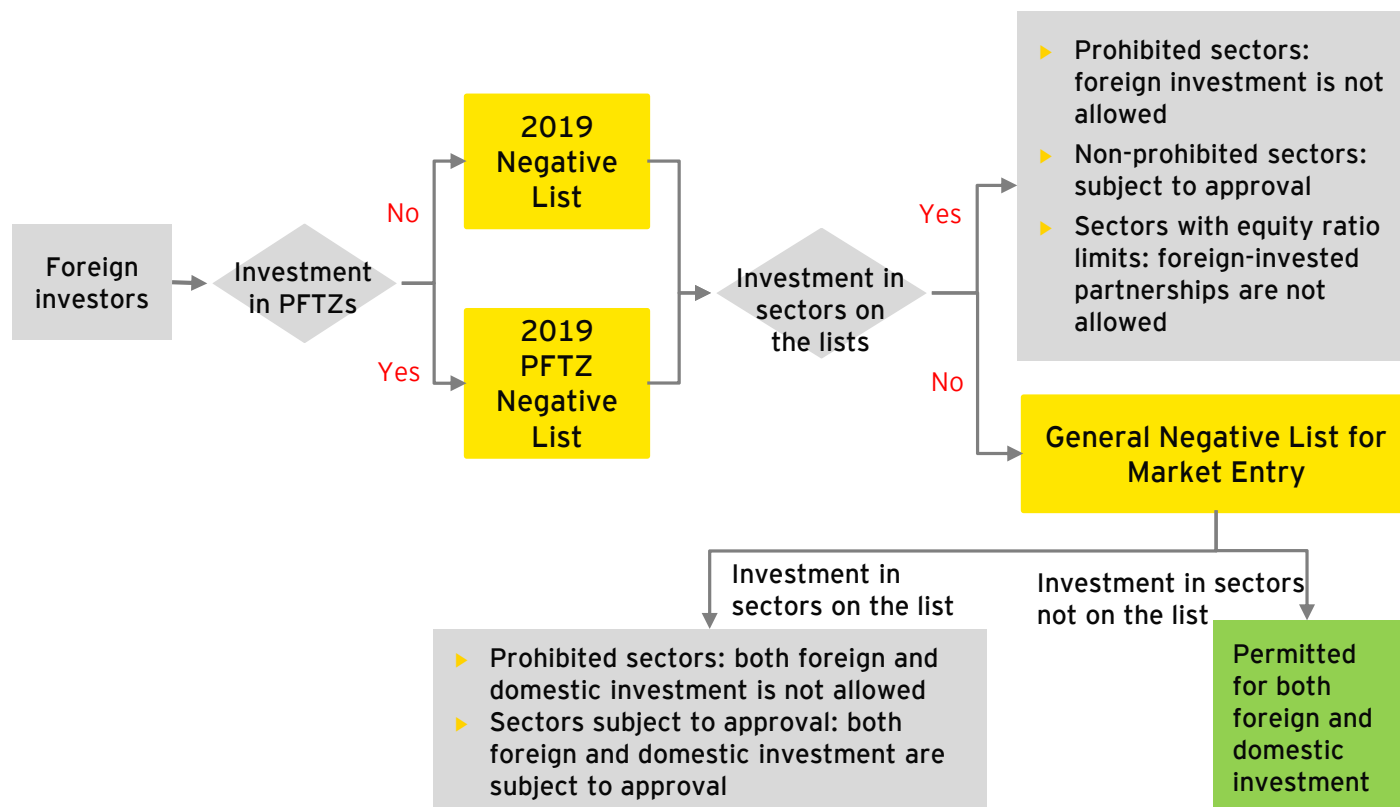
Incentives for foreign investments in encouraged industries			
Applicable areas	Applicable industries	Applicable incentives	Criteria
► <b>Western Region:</b> Chongqing, Gansu, Guangxi, Guizhou, Inner Mongolia, Ningxia, Qinghai, Shaanxi, Sichuan, Tibet, Xinjiang, Yunnan, and certain remote areas	► <b>Under 2019 CWR Catalogue</b> - qualifying industries prescribed for respective areas; or  ► <b>Under 2019 National Catalogue</b> - qualifying industries	► <b>Preferential CIT treatment:</b> A reduced CIT rate of 15% (Prior to 31 December 2020)	► Qualifying business income shall account for more than 70% of the total annual income
		► <b>Preferential import-level tax treatment:</b> The importation of self-used equipment for the prescribed encouraged projects within the total investment quota would be exempt from Customs Duty	► The importation of commodities listed in the "Catalogue of Non-Tax-Free Commodities Imported for Foreign Investment Projects" and "Catalogue of Non-Tax-Free Imported Key Technological Equipment, Machinery and Products" are not eligible for exemption of Customs Duty at import-level
		► <b>Priority in land supply:</b> price of land usage right may be discounted as low as 70% of the lowest price for the same grade industrial lands sold national wide	► Engage in encouraged industrial projects, and ► Qualified as intensive land-usage
► <b>Central and Northeastern Regions:</b> Anhui, Hainan, Henan, Hubei, Hunan, Jiangxi, Shanxi, Heilongjiang, Liaoning, Jilin	► <b>Under 2019 CWR Catalogue</b> - qualifying industries prescribed for respective areas; or  ► <b>Under 2019 National Catalogue</b> - qualifying industries	► <b>Preferential import-level tax treatment (same as above)</b>	► Criteria for preferential import-level tax treatment (same as the above)
		► <b>Priority in land supply - (same as above)</b>	► Criteria for priority in land supply (same as above)
► <b>Regions other than those mentioned above</b>	► <b>Under 2019 National Catalogue</b> - qualifying industries	► <b>Preferential import-level tax treatment (same as above)</b>	► Criteria for preferential import-level tax treatment (same as the above)
		► <b>Priority in land supply - (same as above)</b>	► Criteria for priority in land supply (same as above)

## ► Negative List for Market Access (General Negative List for Market Entry) and 2019 Negative List & 2019 PFTZ List

Currently, there are two basic types of negative lists governing market entry in China:

- **Negative lists for foreign investment:** 2019 Negative List and 2019 PFTZ List, which apply to foreign investors only;
- **General Negative list for market entry:** General Negative List for Market Entry updated in 2018, which applies equally to both domestic and foreign investors

*Figure 3 - Application flow of negative lists for foreign investors' access to the Chinese markets*



The above-mentioned two types of negative lists are designed for different purposes. Currently, China adopts a mechanism of “Pre-establishment National Treatment Plus Negative Lists” for foreign investors' access to the China market. As shown above, the negative lists for foreign investment apply to foreign investors only while foreign investors making investments in sectors that are out of the negative lists scope (i.e., 2019 Negative List and 2019 PFTZ List) shall be still subject to the General Negative List for Market Entry applicable to both domestic and foreign investors.

## ► 2019 Negative List and 2019 PFTZ Negative List

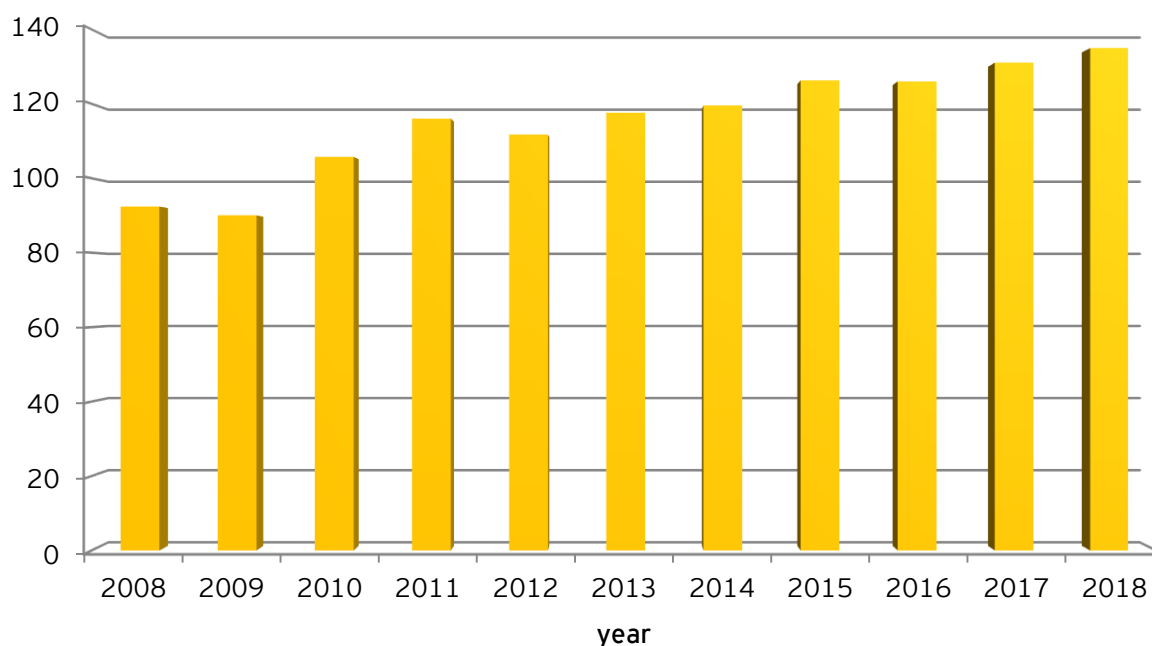
The PFTZ Negative List plays a pioneering role from China's market opening-up perspective. For example, some of the permitted industrial sectors (such as those on performance agency institutions, exploration and mining of oil and natural gas, etc.) implemented in the PFTZs in 2018 will be rolled out on a nationwide basis from 30 July 2019. 2019 PFTZ Negative List relaxes more areas than 2019 Negative List does, e.g., fishing and publishing. It is not unreasonable to expect that such pilot relaxation implemented in the PFTZs may be promoted nationwide after one year trial.

## Conclusion

Foreign direct investment (FDI) in China has been playing a key role in both Chinese and global economic development. The foreign investments have also achieved a shared growth with the opportunities provided by the mega market of China. Choice of capital is quite complicated which often involves comprehensive medium-to-long term projections of economic and business factors. Despite of the current complicated macro-economic environment, the Chinese market still retains its competitive attraction for global investors.

## Foreign Direct Investment (FDI) in China (2008-2018)

Unit: billion US dollars ■ FDI



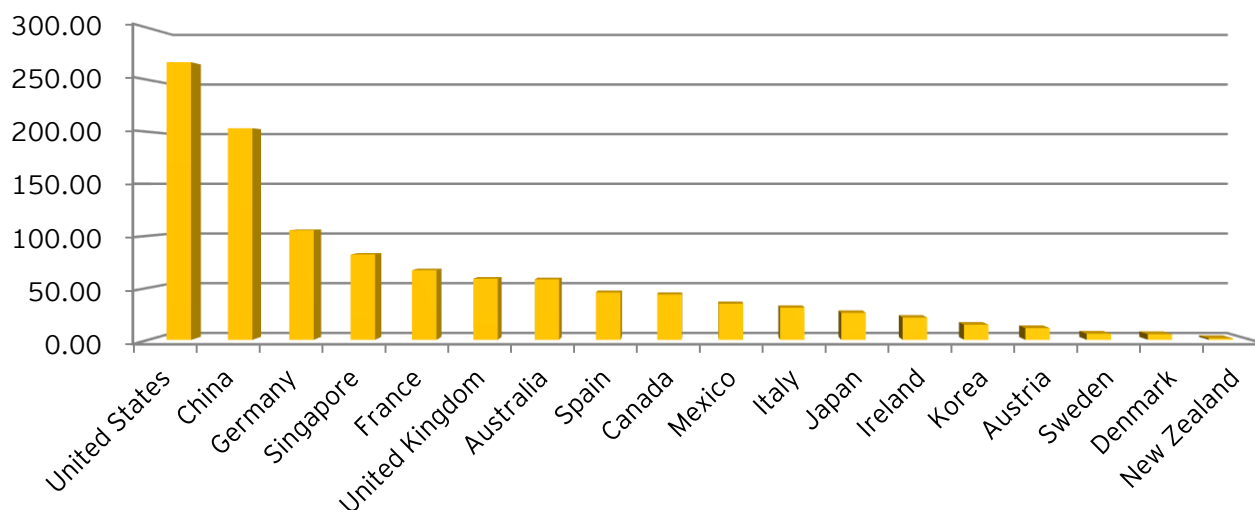
Source: Ministry of Commerce of the PRC

[http://www.fdi.gov.cn/sinfo/s\\_33\\_0.html?q=field7^利用外资快讯&r=&t=&starget=1&style=1800000121-33-10000091](http://www.fdi.gov.cn/sinfo/s_33_0.html?q=field7^利用外资快讯&r=&t=&starget=1&style=1800000121-33-10000091)

(Excluding banking, securities and insurance sectors)

## FDI net inflows of major economies (2018)

Unit: billion US dollars ■ FDI net inflows



Source: World Bank

<https://data.worldbank.org/indicator/BX.KLT.DINV.CD.WD>

The Chinese government has stressed the importance to the use of foreign capital. Staying open not only benefits China's interests but also contributes to the development of global economy. With further relaxation on market entry, it is believed that foreign investment will enjoy a more level playing field and sound business environment, which will certainly gain more support from the global investors.



## Contact us

For more information, please contact your usual EY contact or one of the following EY's China tax leaders.

### Our tax leaders by market segment and service areas

- ▶ **Martin Ngai (China North)**  
+86 10 5815 3231  
martin.ngai@cn.ey.com
- ▶ **Patricia Xia (China Central)**  
+86 21 2228 2878  
patricia.xia@cn.ey.com
- ▶ **Clement Yuen (China South)**  
+86 755 2502 8280  
clement.yuen@cn.ey.com
- ▶ **David Chan (Hong Kong SAR/Macau SAR)**  
+852 2629 3228  
david.chan@hk.ey.com
- ▶ **Heidi Liu (Taiwan)**  
+886 2275 78888  
heidi.liu@tw.ey.com
- ▶ **Carrie Tang (Business Tax Services)**  
+86 21 2228 2116  
carrie.tang@cn.ey.com
- ▶ **Vickie Tan (Global Compliance and Reporting)**  
+86 21 2228 2648  
vickie.tan@cn.ey.com
- ▶ **Kenneth Leung (Indirect Tax)**  
+86 10 5815 3808  
kenneth.leung@cn.ey.com
- ▶ **Andrew Choy (International Tax and Transaction Services)**  
+86 10 5815 3230  
andrew.choy@cn.ey.com
- ▶ **Travis Qiu (ITTS - Transfer Pricing)**  
+86 21 2228 2941  
travis.qiu@cn.ey.com
- ▶ **Jesse Lv (ITTS - Transaction Tax)**  
+86 21 2228 2798  
jesse.lv@cn.ey.com
- ▶ **Paul Wen (People Advisory Services)**  
+852 2629 3876  
paul.wen@hk.ey.com
- ▶ **Becky Lai (Tax Policy)**  
+852 2629 3188  
becky.lai@hk.ey.com
- ▶ **Patricia Xia (Tax Technology and Transformation)**  
+86 21 2228 2878  
patricia.xia@cn.ey.com

### Greater China Tax Leader

- ▶ **Henry Chan**  
+86 10 5815 3397  
henry.chan@cn.ey.com

### Author - China Tax Center

- ▶ **Jane Hui**  
+852 2629 3836  
jane.hui@hk.ey.com

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