

在华外资企业的合规路径与机遇

Compliance Paths and Opportunities for Foreign-Invested Enterprises in China

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在中国持续扩大高水平开放的进程中，自由贸易试验区（以下简称“自贸试验区”）始终是外资准入政策的“试验田”。《自由贸易试验区外商投资准入特别管理措施（负面清单）》（2021年版）作为规范外资进入的核心文件，明确了“禁止准入”“限制准入”的领域及具体要求，为外资企业在华布局提供了清晰的规则边界。本文结合清单内容，解析重点领域限制、合规要点及潜在机遇，助力外资企业精准把握自贸试验区的开放红利。

一、负面清单的核心逻辑：“非禁即入”与分类管控

2021年版自贸试验区负面清单的核心原则是“清单之外，内外资一致”，即未列入清单的领域，外资企业可与内资企业享受同等准入待遇。清单通过“禁止类”“限制类”两类措施，对涉及国家安全、公共利益的领域实施管控，具体呈现三大特征：

行业全覆盖，重点领域聚焦：清单涵盖农林牧渔、采矿、制造、服务等11个行业大类，尤其对关系国计民生的领域，如粮食安全、矿产资源、媒体传播领域，设置严格限制。

量化标准明确：对限制类领域明确股权比例、高管国籍等要求，“小

As China continues to expand high-level opening-up, Free Trade Zones (FTZs) have always served as "experimental fields" for foreign investment access policies. The Special Administrative Measures for Foreign Investment Access in Free Trade Zones (Negative List) (2021 Edition), as the core document regulating foreign investment entry, clarifies the fields and specific requirements for "prohibited access" and "restricted access," providing clear regulatory boundaries for foreign-invested enterprises to layout in China. Combining the content of the List, this article analyzes restrictions in key areas, compliance essentials, and potential opportunities to help foreign-invested enterprises accurately grasp the opening-up dividends of FTZs.

I. Core Logic of the Negative List: "Non-prohibited Items Are Accessible" and Classified Control

The core principle of the 2021 Edition of the FTZ Negative List is "consistency between domestic and foreign investment beyond the List," meaning that in fields not included in the List, foreign-invested enterprises can enjoy the same access treatment as domestic enterprises. The List implements controls over areas involving national security and public interests through two types of measures: "prohibited items" and "restricted items," with three key characteristics:

Full industry coverage with focus on key areas: The List covers 11 major industry categories including agriculture, forestry, animal husbandry, fishery, mining, manufacturing, and services, with strict restrictions especially on areas vital to national economy and people's livelihood such as food security, mineral resources, and media communication.

Clear quantitative standards: For restricted areas, it specifies requirements on shareholding ratios and nationality of senior executives, such as "Chinese parties shall hold no less than 34% of shares in wheat and corn new variety breeding" and "the investment

麦、玉米新品种选育中方股比不低于34%”“公共航空运输公司外商及关联企业投资比例不超过25%”，便于企业精准评估合规性。

例外情形清晰：明确“经国务院批准的特定投资可不受清单限制”“港澳投资者可享受更优惠安排”等例外条款，为特殊项目留足灵活空间。

二、重点领域限制解析：外资企业需关注的“红线”与“底线”

清单对多个领域的准入限制直接影响外资企业的经营模式设计，以下为需重点关注的领域：

1. 农林牧渔业：粮食安全与物种保护优先

限制措施：(1) 小麦、玉米新品种选育和种子生产需由中方控股（股比 $\geq 34\%$ ）；(2) 禁止投资中国特有珍稀品种的研发、养殖及转基因品种选育。

2. 采矿业与能源业：战略性资源绝对管控

限制措施：(1) 禁止投资稀土、放射性矿产、钨的勘查、开采及选矿；(2) 核电站建设与经营须由中方控股。

3. 交通运输与电信业：控制权与国家安全绑定

限制措施：(1) 国内水上运输公司、公共航空运输公司须由中方控股，民用机场建设须中方相对控股；(2) 基础电信业务须中方控股，增值电信业务外资股比不超过50%（电子商务、国内多方通信、存储转发类、呼叫中心除外除外）。

4. 服务业：文化安全与社会治理领域严格受限

限制措施：(1) 禁止投资互联网新闻

ratio of a single foreign investor and its affiliated enterprises in public air transport companies shall not exceed 25%", facilitating enterprises to accurately assess compliance.

Clear exceptions: It explicitly states exceptional clauses such as "specific investments approved by the State Council may be exempt from the List" and "Hong Kong and Macao investors may enjoy more preferential arrangements," leaving sufficient flexibility for special projects.

II. Analysis of Restrictions in Key Areas: "Red Lines" and "Bottom Lines" for Foreign-Invested Enterprises

Restrictions on access in multiple fields directly affect the design of business models for foreign-invested enterprises. The following are key areas requiring attention:

Agriculture, forestry, animal husbandry, and fishery: Priority to food security and species protection

Restrictive measures:

Chinese parties must hold controlling stakes (shareholding ratio $\geq 34\%$) in wheat and corn new variety breeding and seed production;

Investment in R&D, breeding, and cultivation of China's unique rare and fine varieties, as well as breeding of genetically modified varieties, is prohibited.

Mining and energy industries: Absolute control over strategic resources

Restrictive measures:

Investment in prospecting, mining, and ore dressing of rare earths, radioactive minerals, and tungsten is prohibited;

Chinese parties must hold controlling stakes in the construction and operation of nuclear power plants.

Transportation and telecommunications industries: Control rights tied to national security

Restrictive measures:

Chinese parties must hold controlling stakes in domestic water transport companies and public air transport companies; Chinese parties must hold relative controlling stakes in the construction of civil airports;

Chinese parties must hold controlling stakes in basic telecommunications services; the foreign investment ratio in value-added telecommunications services shall not exceed 50% (except for e-commerce, domestic multi-party communication, store-and-forward, and call centers).

Service industry: Strict restrictions in areas of cultural

信息服务、网络出版服务、文物拍卖等; (2) 教育领域: 义务教育机构禁止外资进入, 学前、高中及高等教育须中外合作办学且中方主导 (校长为中国籍, 中方理事占比 $\geq 1/2$); (3) 医疗领域: 医疗机构限于合资形式。

三、合规操作指南: 外资企业的“避坑”与“借力”策略

为确保在自贸试验区的投资合法合规, 外资企业需构建“事前评估—事中管控—事后调整”的全流程机制:

1. 事前: 精准匹配清单, 避开“禁止类”雷区

投资前通过商务部官网或自贸试验区“外资服务平台”查询清单全文, 对照业务范围逐一核对。

若计划开展“互联网文化经营”, 需确认是否涉及“音乐除外”的禁止领域;

2. 事中: 设计合规架构, 满足“限制类”要求

股权结构: 对要求“中方控股”的核电站、民用机场等领域, 外资股比需严格控制在 50% 以下; 对“中方相对控股”社会调查领域, 中方股比不低于 67% 即可。

高管配置: 通用航空公司、社会调查机构等需遵守“法定代表人中国籍”要求, 提前确认核心管理人员的国籍及任职资格。

3. 事后: 善用例外条款, 灵活应对政策调整

港澳投资者可依托《内地与香港/澳门关于建立更紧密经贸关系的安排》(简称 CEPA), 享受比清单更优惠的准入待遇, 例如部分服务业可全资持股。

security and social governance

Restrictive measures:

Investment in internet news information services, online publishing services, and cultural relic auctions is prohibited;

Education: Foreign investment in compulsory education institutions is prohibited; preschool, senior high school, and higher education institutions are limited to Sino-foreign cooperative education with Chinese parties in a leading position (the principal must be a Chinese national, and Chinese members shall account for no less than 1/2 of the council);

Healthcare: Medical institutions are limited to joint ventures.

III. Compliance Operation Guide: Strategies for "Avoiding Pitfalls" and "Leveraging Advantages"

To ensure the legality and compliance of investments in Free Trade Zones, foreign-invested enterprises need to establish a full-process mechanism of "pre-assessment—in-process control—post-adjustment"

Pre-investment: Accurately match the List to avoid "prohibited items"

Before investment, check the full text of the List through the Ministry of Commerce website or the FTZ "foreign investment service platform," and verify against business scope item by item.

For example, if planning to engage in "internet cultural operations," confirm whether it involves prohibited areas "except for music."

In-process operation: Design compliant structures to meet "restricted items" requirements

Shareholding structure: In areas requiring "Chinese controlling stakes" such as nuclear power plants and civil airports, the foreign investment ratio must be strictly controlled below 50%; in areas requiring "relative Chinese controlling stakes" such as social surveys, the Chinese shareholding ratio of no less than 67% is sufficient.

Senior management configuration: General aviation companies, social survey institutions, etc., must comply with the requirement that "the legal representative must be a Chinese national," and confirm the nationality and qualification of core management personnel in advance.

Post-investment: Make good use of exceptional clauses to flexibly respond to policy adjustments

Hong Kong and Macao investors can rely on the Mainland and Hong Kong/Macau Closer Economic

四、清单外机遇：自贸试验区的“开放增量”领域

负面清单的“减法”本质是为清单外领域的开放“做加法”。外资企业可重点关注以下未受限领域，把握自贸试验区的独特优势：

先进制造业：机器人、集成电路、新能源汽车等领域完全开放，可设立全资研发中心或生产基地，享受自贸试验区的税收优惠；

现代服务业：融资租赁、商业保理等领域无股权限制，外资可独资运营，且依托自贸试验区的跨境资金流动便利降低融资成本；

绿色经济：光伏、风电、碳减排技术等领域未列入清单，可参与自贸试验区内的“绿色项目库”，享受土地、补贴等配套支持。

结语：在规则边界内拥抱开放红利

2021年版自贸试验区外商投资准入负面清单既是“红线”，也是“路标”——它明确了外资企业不可触碰的禁区，更通过“非禁即入”的原则释放了广阔的开放空间。对在华外资企业而言，理解清单的核心在于：在合规框架内精准匹配自身优势与中国市场需求。

无论是通过合资模式进入限制领域，还是在清单外领域全资布局，外资企业若能将经营策略与自贸试验区的政策特征结合，便能在“安全”与“发展”之间找到最优解，真正扎根中国市场，共享发展机遇。

Partnership Arrangement (CEPA) to enjoy more preferential access treatment than the List, for example, full ownership in some service industries.

IV. Opportunities Beyond the List: "Incremental Opening-Up" Areas in FTZs

The "subtraction" of the Negative List essentially serves the "addition" of opening-up in areas beyond the List. Foreign-invested enterprises can focus on the following unrestricted areas to seize the unique advantages of FTZs:

Advanced manufacturing: Fields such as robotics, integrated circuits, and new energy vehicles are fully open, allowing the establishment of wholly foreign-owned R&D centers or production bases to enjoy tax incentives in FTZs;

Modern service industry: Fields such as financial leasing and commercial factoring have no shareholding restrictions, allowing wholly foreign-owned operations, and leveraging the convenience of cross-border capital flows in FTZs to reduce financing costs;

Green economy: Fields such as photovoltaic power, wind power, and carbon emission reduction technologies are not included in the List, enabling participation in the "green project pool" in FTZs to enjoy supporting policies such as land and subsidies.

Conclusion: Embracing Opening-Up Dividends Within Regulatory Boundaries

The 2021 Edition of the FTZ Foreign Investment Access Negative List is both a "red line" and a "roadmap"—it clarifies the forbidden zones for foreign-invested enterprises and, more importantly, releases broad opening-up space through the principle of "non-prohibited items are accessible." For foreign-invested enterprises in China, the core of understanding the List lies in accurately matching their own advantages with China's market demand within the compliance framework.

Whether entering restricted areas through joint ventures or deploying wholly-owned operations in areas beyond the List, foreign-invested enterprises can find the optimal balance between "security" and "development" by aligning their business strategies with the policy characteristics of FTZs, thus truly rooting in the Chinese market and sharing development opportunities.