

ANNEX III
SCHEDULE OF RESERVATIONS AND NON-CONFORMING MEASURES FOR
INVESTMENT

CHINA

LIST A
EXPLANATORY NOTES

1. List A sets out, pursuant to Article 10.8 (Reservations and Non-Conforming Measures), China's existing measures that are not subject to some or all of the obligations imposed by:
 - (a) Article 10.3 (National Treatment);
 - (b) Article 10.4 (Most-Favoured-Nation Treatment);
 - (c) Article 10.6 (Prohibition of Performance Requirements); or
 - (d) Article 10.7 (Senior Management and Board of Directors).
2. Each entry in List A sets out the following elements:
 - (a) **Sector** refers to the sector for which the entry is made;
 - (b) **Level of Government** indicates the level of government maintaining the scheduled measure(s);
 - (c) **Type of Obligation** specifies the Article(s) referred to in paragraph 1 that, pursuant to subparagraph 1(a) of Article 10.8 (Reservations and Non-Conforming Measures), do not apply to the non-conforming aspects of the Source of Measure or the Description of Measure, as set out in paragraph 3;
 - (d) **Description of Measure** sets out the non-conforming aspects of the measure for which the entry is made; and
 - (d) **Source of Measure**¹ identifies the laws, regulations, or other measures for which the entry is made. A measure cited in the Source of Measure element:
 - (i) means the measure as amended, continued or renewed as of the date of entry into force of this Agreement; and
 - (ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure.
3. In accordance with subparagraph 1(a) of Article 10.8 (Reservations and Non-Conforming Measures), and subject to subparagraph 1(c) and paragraph 3 of Article 10.8 (Reservations and Non-Conforming Measures), the Articles specified in the Type of Obligation element of an entry in List A do not apply to the non-conforming aspects of the Description of Measure element or of the law, regulation, or other measure, as applicable, identified in the Source of Measure of that entry.

¹ For greater certainty, a change in the level of government at which a measure is administered or enforced does not, by itself, decrease the conformity of the measure with the obligations referred to in Article 10.8 (Reservations and Non-Conforming Measures).

4. In the interpretation of an entry in List A, all elements of the entry, as well as the Articles against which the entry is made, shall be considered. Unless otherwise explicitly indicated in the entry, the Description of Measure element shall prevail over all other elements, including where a difference exists between the Description of Measure element and the Source of Measure element in the aspect of investment liberalisation.
5. Where there is overlap between the contents of List A and List B, notwithstanding the obligations China assumes under Article 10.8 (Reservations and Non-Conforming Measures) and List A, China remains entitled to adopt or maintain relevant measures in accordance with Article 10.8 (Reservations and Non-Conforming Measures) and List B.
6. For the purposes of List A:
 - (a) **foreign investor** means any investor of another Party or a non-Party.
 - (b) **foreign investor may not invest** means a foreign investor may not directly or indirectly invest, including by holding any shares, stock or other forms of rights or interest, in the territory of China; and
 - (c) **Chinese control** means the circumstances where the total investment proportion held by foreign investors, whether directly and indirectly, is not greater than 49 per cent.
7. List A only applies to non-services investments by foreign investors, and does not apply to any investments by foreign investors in services (including cultural industries, constructions and operations of infrastructural and other facilities). Any aspects of such an entry which relate to investment in service are subject to the Chapter 8 (Trade in Services) only. For greater certainty, List A shall apply to the following sectors: manufacturing, agriculture, fishery, forestry and hunting, mining and quarrying; and all or a combination of these sectors in which an entry is made.

1.

Sector	:	Seed Industry
Level of Government	:	Central
Type of Obligation	:	National Treatment (Article 10.3)
Description of Measure	:	<ol style="list-style-type: none"> 1. Foreign investors may not invest in the research and development, breeding and planting of the precious and fine varieties which are rare and special in China, or the production of the relevant reproductive materials thereof (including high quality genes in the industries of crop production, livestock industry and aquaculture). 2. Foreign investors may not invest in the selection and breeding of transgenic varieties of agricultural crops, livestock and breeding poultry and aquatic fry, or the production of their transgenic seeds (sprouts). 3. Investments by foreign investors in the selection and breeding of new varieties of wheat or corn and seed production of wheat or corn require Chinese control.
Source of Measure	:	<ul style="list-style-type: none"> - <i>Seed Law</i> (Amended in 2015), Articles 8, 11, and 62; - <i>Special Administrative Measures for Market Access of Foreign Investment</i> (Negative List) (2019 Edition), Articles 1 through 3

2.

Sector	:	Fishing
Level of Government	:	Central
Type of Obligation	:	National Treatment (Article 10.3)
Description of Measure	:	Foreign investors may not invest in the fishing of aquatic products within the sea and inland waters under the jurisdiction of China.
Source of Measure	:	<ul style="list-style-type: none"> - <i>Fisheries Law</i> (2013); - <i>Law on the Exclusive Economic Zone and the Continental Shelf</i> (1998), Article 5; - <i>Law on the Territorial Sea and the Contiguous Zone</i> (1992), Article 11; - <i>Special Administrative Measures for Market Access of Foreign Investment</i> (Negative List) (2019 Edition), Article 4

3.

Sector	:	Exploration and Exploitation of Exclusive Economic Zone and Continental Shelf
Level of Government	:	Central
Type of Obligation	:	National Treatment (Article10.3)
Description of Measure	:	Any international organisation, foreign entity or individual must obtain approval from the Chinese government for carrying out activities of exploring and exploiting natural resources in the exclusive economic zone of China or on the Chinese continental shelf, or drilling on the Chinese continental shelf for any purpose.
Source of Measure	:	<i>Law on the Exclusive Economic Zone and the Continental Shelf (1998), Article 7</i>

4.

Sector	:	Exploitation and Ore Dressing of Rare Earth and Rare Minerals
Level of Government	:	Central
Type of Obligation	:	National Treatment (Article 10.3)
Description of Measure	:	<ol style="list-style-type: none"> 1. Foreign investors may not invest in the exploration, exploitation or ore dressing of rare earth and tungsten. 2. Foreign investors may not enter the mining area of rare earth mines or obtain mine geological data, ore samples or production processes and technology without approval.
Source of Measure	:	<ul style="list-style-type: none"> - <i>Notice of the State Council on Classifying Tungsten, Tin, Antimony and Ion-Type Rare Earth Minerals as Specific Minerals Under Protective Mining by the State</i> (1991), Article 2; - <i>Special Administrative Measures for Market Access of Foreign Investment</i> (Negative List) (2019 Edition), Article 5

5.

Sector	:	Automobile Manufacture
Level of Government	:	Central
Type of Obligation	:	National Treatment (Article 10.3)
Description of Measure	:	Investments by foreign investors in the manufacture of complete automobiles, except for special purposes automobiles and new energy automobiles, require that the shareholding percentage of the Chinese party shall not be less than 50 per cent, and one foreign investor may establish up to two equity joint ventures that manufacture complete automobiles of the same category (passenger cars, commercial cars) within the territory of China.
Source of Measure	:	<ul style="list-style-type: none"> - <i>Automobile Industry Development Policy</i> (2009), Article 48; - <i>Special Administrative Measures for Market Access of Foreign Investment</i> (Negative List) (2019 Edition), Article 9

6.

Sector	:	Manufacture of Communication Equipment
Level of Government	:	Central
Type of Obligation	:	National Treatment (Article 10.3)
Description of Measure	:	Investments by foreign investors in the manufacture of ground reception facilities for satellite television and broadcast and key components thereof are prohibited.
Source of Measure	:	<ul style="list-style-type: none"> - <i>Rules for the Administration of Ground Receiving Facilities of Satellite Television Broadcasting</i> (Amended in 2018), Articles 3, 4; - <i>Provisional Measures for the Installation of Ground Receiving Facilities of Satellite Television Broadcasting</i> (2009), Article 15; - <i>Special Administrative Measures for Market Access of Foreign Investment</i> (Negative List) (2019 Edition), Article 10; - Any other existing laws, regulations and rules

7.

Sector	:	Pharmaceutical Manufacture
Level of Government	:	Central
Type of Obligation	:	National Treatment (Article 10.3)
Description of Measure	:	<ol style="list-style-type: none"> 1. Foreign investors may not invest in the processing of traditional Chinese medicinal material as listed in the <i>Regulations on the Administration and Protection of Wild Medicinal Resources and the List of Precious and Endangered Flora in China</i>. 2. Foreign investors may not invest in the application of processing techniques of Chinese medicinal decocting pieces including steaming, plain stir-baking, stir-baking with adjuvant, calcining or the manufacture of confidential prescription products of Chinese patent medicine.
Source of Measure	:	<ul style="list-style-type: none"> - <i>Circular of the State Food and Drug Administration on the Relevant Issues concerning the Business Scope of the Foreign-funded Enterprises that Engage in the Production of Herbal Medicines for Decoction</i> (2006); - <i>Regulation on Protection of Wild Medicinal Resources</i> (1987); - <i>List of Chinese Rare and Endangered Protected Plants</i> (1987); - <i>Special Administrative Measures for Market Access of Foreign Investment</i> (Negative List) (2019 Edition), Article 8

8.

Sector	:	Government-granted Monopoly
Level of Government	:	Central
Type of Obligation	:	National Treatment (Article 10.3)
Description of Measure	:	Foreign investors may not invest in the manufacture, wholesale, retail, import or export of leaf tobacco, cigarettes, re-dried leaf tobacco, cigars, cut tobacco and other tobacco products ²
Source of Measure	:	<ul style="list-style-type: none"> - <i>Law on Tobacco Monopoly</i> (2015), Articles 1 through 3; - <i>Special Administrative Measures for Market Access of Foreign Investment</i> (Negative List) (2019 Edition), Article 13

² For the purposes of this entry, “other tobacco products” refers to products entirely or partly made of the leaf tobacco as raw material, which are manufactured to be used for smoking, sucking, chewing or snuffing.

9.

Sector	:	All Sectors
Level of Government	:	Central
Type of Obligation	:	National Treatment (Article 10.3)
Description of Measure	:	The relevant authorities in the course of performing their duties according to law, shall not grant the licence, enterprise registration, or any other relevant matters if a foreign investor proposes to invest in sectors covered by the Negative List but not in compliance with the requirements listed in the Negative List; nor the project approval for an investment in fixed assets should be issued. ³
Source of Measure	:	<i>Regulation for the Implementation of Foreign Investment Law (2019), Article 34</i>

³ For the purposes of this entry, “Negative List” refers to the Special Administrative Measures for the Access of Foreign Investment (Negative List) published by the Chinese government which is effective on the date of entry into force of this Agreement.

10.

Sector	:	All Sectors
Level of Government	:	Central
Type of Obligation	:	National Treatment (Article 10.3)
Description of Measure	:	<p>Foreign investors may not apply for opening A share securities accounts, except for:</p> <ol style="list-style-type: none"> 1) Qualified foreign institutional investors (including Qualified Foreign Institutional Investor (QFII) and Renminbi Qualified Foreign Institutional Investor (RQFII))⁴; 2) Foreign individuals with Chinese permanent Residency permit; 3) Foreign employees working in China who are incentive grantees of A share listed companies 4) Foreigners working in China that securities supervision institutions of their mother countries have already established supervision cooperation with China Securities Regulatory Commission; 5) Foreign investors who made strategic investment in A share listed companies; and 6) Foreign investors from the foreign share-holding companies which are later listed in A share market. <p>Foreign investors may not apply for opening futures accounts, except for:</p> <ol style="list-style-type: none"> 1) Qualified foreign institutional investors (including QFII and RQFII); 2) Foreign individuals with Chinese permanent Residency permit; and 3) Foreign investors who are allowed to trade designated futures products.
Source of Measure	:	<ul style="list-style-type: none"> - <i>Securities Law (2014)</i>, Article 166; - <i>Regulation on the Administration of Futures Trading (2017)</i>, Article 23; - <i>Measures for the Administration of Securities Investment in China by Qualified Foreign Institutional Investors (2006)</i>; - <i>Measures for the Pilot Program of Securities Investment in China by RMB Qualified Foreign Institutional Investors (2013)</i>;

⁴ For greater certainty, qualified foreign institutional investors (including QFII and RQFII) who engage in trading securities and futures shall comply with regulations of China Securities Regulatory Commission and State Administration of Foreign Exchange, and meet requirements on qualification, shareholding percentage, spectrum for investment, fund transfer and so on.

	<ul style="list-style-type: none"> - <i>Measures for the Administration of Equity Incentives of Listed Companies</i> (2018), Article 45; - <i>Measures for the Administration of Strategic Investment in Listed Companies by Foreign Investors</i> (2015), Article 15; - <i>Measures for the Administration of Securities Registration and Clearing</i> (2018), Article 19; - <i>Notice on Matters Regarding the Opening of A-share Securities Accounts by Eligible Foreigners</i> (2019); - <i>Interim Measures for the Administration of Trading in Designated Domestic Futures Products by Foreign Traders and Foreign Brokerage Agencies</i> (2015), Article 10
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11.

Sector	:	All Sectors
Level of Government	:	Central
Type of Obligation	:	National Treatment (Article 10.3)
Description of Measure	:	A foreign investor making an investment within the territory of China shall complete a foreign exchange registration in accordance with the relevant provisions, and shall comply with foreign exchange provisions, including provisions on account opening, funds transfer and settlement, receipt and payment and cross-border securities investment quota, etc.
Source of Measure	:	<ul style="list-style-type: none"> - <i>Regulation on the Administration of Foreign Exchange</i> (2008), Articles 16 and 23; - <i>Notice of the State Administration of Foreign Exchange on Reforming and Regulating Policies on the Administration over Foreign Exchange Settlement of Capital Accounts</i> (2016)

12.

Sector	:	All Sectors
Level of Government	:	Central
Type of Obligation	:	National Treatment (Article 10.3)
Description of Measure	:	<ol style="list-style-type: none"> 1. Foreign investors may not carry out business operations in China in the forms of Individual Business Entities or Individual Sole Proprietorship Enterprises, or as members of Specialised Cooperatives of Farmers. 2. Foreign-funded partnership enterprises may not be established for industries, areas or businesses which are subject to the requirement of “foreign investor may not invest”, “Chinese control”, “relative Chinese control” or industries, areas or businesses subject to certain foreign investment proportion requirements, as included in the Negative List ⁵.
Source of Measure	:	<ul style="list-style-type: none"> - <i>Law on Individual Sole Proprietorship Enterprises</i> (2000), Article 47; - <i>Law on Specialized Cooperatives of Farmers</i> (2017), Articles 2 through 4 and 19; - <i>Provisions for the Administration over Registration of Foreign-invested Partnership Enterprises</i> (2014), Article 3; - <i>Regulation on Individual Business Entity</i> (Amended in 2016), Article 2; - <i>Special Administrative Measures for Market Access of Foreign Investment (Negative List)</i> (2019 Edition), Paragraph 3 of the Notes

⁵ For the purposes of this entry, “Negative List” refers to the Special Administrative Measures for the Access of Foreign Investment (Negative List) published by the Chinese government which is effective on the date of entry into force of this Agreement.

LIST B

EXPLANATORY NOTES

1. List B sets out, pursuant to Article 10.8 (Reservations and Non-Conforming Measures), the specific sectors, subsectors, or activities for which China may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:
 - (a) Article 10.3 (National Treatment);
 - (b) Article 10.4 (Most-Favoured-Nation Treatment);
 - (c) Article 10.6 (Prohibition of Performance Requirements); or
 - (d) Article 10.7 (Senior Management and Board of Directors).
2. Each entry in List B sets out the following elements:
 - (a) **Sector** refers to the sector for which the entry is made;
 - (b) **Type of Obligation** specifies the Article(s) referred to in paragraph 1 that, pursuant to Article 10.8 (Reservations and Non-Conforming Measures), do not apply to the sectors, subsectors, or activities covered by the entry;
 - (c) **Description** sets out the scope of the sectors, subsectors, or activities covered by the entry; and
 - (d) **Existing Measures** identifies, for transparency purposes, existing measures that apply to the sectors, subsectors, or activities covered by the entry.
3. In accordance with Article 10.8 (Reservations and Non-Conforming Measures), the Article(s) specified in the Type of Obligation element of an entry in List B do not apply to the sectors, subsectors, or activities identified in the Description element of that entry.
4. For the purposes of List B, **foreign investor** means any investor of another Party or a non-Party.
5. List B only applies to non-services investments by foreign investors, does not apply to any investments by foreign investors in services (including cultural industries, constructions and operations of infrastructural and other facilities). Any aspects of such an entry which relate to investment in service are subject to the Chapter 8 (Trade in Services) only. For greater certainty, List B shall apply to the following sectors: manufacturing, agriculture, fishery, forestry and hunting, mining and quarrying; and all or a combination of these sectors in which an entry is made.

1.

Sector	:	Atomic Energy
Type of Obligation	:	National Treatment (Article 10.3) Most-Favoured-Nation Treatment (Article 10.4) Prohibition of Performance Requirements (Article 10.6) Senior Management and Board of Directors (Article 10.7)
Description	:	China reserves the right to adopt or maintain any measure with respect to the following: utilisation of atomic energy (including construction or operation of nuclear power stations); nuclear fuels; nuclear materials; nuclear raw materials; exploration, exploitation and processing of radioactive minerals; treatment and disposal of radioactive wastes; nuclear energy related services; design, manufacture, production, transfer, use, import and export related to nuclear technology application; planning, monitoring, maintenance and repair services related to nuclear energy.
Existing Measures	:	-

2.

Sector	:	Protection of Biological Resources
Type of Obligation	:	National Treatment (Article 10.3) Prohibition of Performance Requirements (Article 10.6)
Description	:	China reserves the right to require approval of the research and development activities conducted by the foreign investment enterprises utilising the biological resources ⁶ (including human, animals, plants, and microorganism resources) which are originated from and protected by China. China may also require the aforesaid enterprises to conduct such activities in the form of cooperation with Chinese organisations and to share the benefits generated from the research and development, as well as the following application and commercialisation.
Existing Measures	:	<ul style="list-style-type: none"> - <i>Wild Animals Protection Law</i> (Amended in 2018), Articles 27,40 and 48; - <i>Animal Husbandry Law</i> (Amended in 2015), Articles 16 and 17; - <i>Grassland Law</i> (Amended in 2013), Articles 44 and 49; - <i>Seed Law</i> (Amended in 2015), Articles 8,10 and 11; - <i>Fisheries Law</i> (2013), Articles 8 and 46; - <i>Regulation on Wild Plants Protection</i> (Amended in 2017), Articles 16, 20 and 21; - <i>Regulation on the Administration of Human Genetic Resources</i> (2019), Articles 7, 21, 22 and 24

⁶ For the purposes of this entry, the “biological resources” refers to the genetic resources, organisms or parts thereof, biological communities, or any other biotic component of ecosystems with practical or potential use or value for humanity.

3.

Sector	:	All sectors
Type of Obligation	:	National Treatment (Article 10.3) Most-Favoured-Nation Treatment (Article 10.4) Prohibition of Performance Requirements (Article 10.6) Senior Management and Board of Directors (Article 10.7)
Description	:	China reserves the right to adopt or maintain any measure that grants rights or preferences to ethnic minorities ⁷ and ethnic minority areas ⁸ with a view to balancing economic development and maintaining social justice.
Existing Measures	:	-

⁷ For the purposes of this entry, “ethnic minorities” refers to 55 non-Han minorities that have less population than Han nationality in the 56 ethnic nationalities identified and recognised by the Chinese central government.

⁸ For the purposes of this entry, “ethnic minority areas” refers to:

- (a) autonomous ethnic minority regions as set forth in the *Constitution Law of the People’s Republic of China* and the *Law on Autonomy of Ethnic Minority Areas of the People’s Republic of China*;
- (b) ethnic minority town set up in accordance with the *Notice Regarding Establishment of Ethnic Minority Towns and the Administrative Regulations on Ethnic Minority Towns* issued by the State Council; and
- (c) the three provinces of Yunnan, Guizhou, and Qinghai.

4.

Sector	:	All sectors
Type of Obligation	:	National Treatment (Article 10.3) Prohibition of Performance Requirements (Article 10.6) Senior Management and Board of Directors (Article 10.7)
Description	:	China reserves the right to adopt or maintain any measure that grants rights or preferences to special groups (including the groups of preferential treatment, the disabled, aged people, children and households enjoying the minimum living guarantee, and people living in extreme difficulty).
Existing Measures	:	-

5.

Sector	:	National Traditional Craftsmanship
Type of Obligation	:	National Treatment (Article 10.3) Most-Favoured-Nation Treatment (Article 10.4) Prohibition of Performance Requirements (Article 10.6) Senior Management and Board of Directors (Article 10.7)
Description	:	China reserves the right to adopt or maintain any measure with respect to national traditional craftsmanship including production of rice paper, ink stick, tiger-bone and ivory.
Existing Measures	:	-

6.

Sector	:	All sectors
Type of Obligation	:	National Treatment (Article 10.3) Most-Favoured-Nation Treatment (Article 10.4) Prohibition of Performance Requirements (Article 10.6) Senior Management and Board of Directors (Article 10.7)
Description	:	China reserves the right to adopt or maintain any measure with respect to non-government organisations (including but not limited to private non-enterprise units, associations, foundations, foreign non-government organisations and other civil social organisations and groups and their representative institutions).
Existing Measures	:	<ul style="list-style-type: none"> - <i>Law of the People's Republic of China on the Administration of Activities of Overseas Non-Governmental Organisations within the Territory of China</i> (2016) - <i>Regulations on the Administration of Foundations</i> (2004), Articles 6, 13, 23 and 24

7.

Sector	:	Land
Type of Obligation	:	National Treatment (Article 10.3) Most-Favoured-Nation Treatment (Article 10.4) Prohibition of Performance Requirements (Article 10.6) Senior Management and Board of Directors (Article 10.7)
Description	:	China reserves the right to adopt or maintain any measure with respect to land.
Existing Measures	:	-

8.

Sector	:	All Sectors
Type of Obligation	:	National Treatment (Article 10.3) Most-Favoured-Nation Treatment (Article 10.4) Prohibition of Performance Requirements (Article 10.6) Senior Management and Board of Directors (Article 10.7)
Description	:	China reserves the right to adopt or maintain any measure with respect to the acquisition, alteration, distribution, transfer and disposition of the assets or equity interests held by state-owned enterprises and governmental agencies.
Existing Measures	:	-

9.

Sector	:	All Sectors
Type of Obligation	:	Most-Favoured-Nation Treatment (Article 10.4)
Description	:	<p>China reserves the right to adopt or maintain any measure that accords differential treatment to the parties under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.⁹</p> <p>With respect to the area of fisheries, China reserves the right to adopt or maintain any measure that accords differential treatment to the parties under any bilateral or multinational agreement in force or signed after the date of entry into force of this Agreement.</p>
Existing Measures	:	-

⁹ For greater certainty, this right extends to any differential treatment accorded pursuant to a subsequent review or amendment of the relevant bilateral or multilateral international agreement.

10.

Sector	:	All Sectors
Type of Obligation	:	National Treatment (Article 10.3) Most-Favoured-Nation Treatment (Article 10.4) Prohibition of Performance Requirements (Article 10.6) Senior Management and Board of Directors (Article 10.7)
Description	:	China reserves the right to adopt or maintain any measure with respect to any special arrangement or favourable treatment for any investor from Hong Kong, Macao and Taiwan as well as any investment thereof.
Existing Measures	:	-

11.

Sector	:	All Sectors
Type of Obligation	:	National Treatment (Article10.3) Most-Favoured-Nation Treatment (Article10.4) Prohibition of Performance Requirements (Article 10.6) Senior Management and Board of Directors (Article 10.7)
Description	:	China reserves the right to adopt or maintain any measure with respect to new sectors and industries.
Existing Measures	:	-