

New Rules on Foreign Direct Investment in China

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Most foreign direct investment projects will be treated the same as their domestic counterparts with regard to governmental approval requirements under new rules passed by China's State Council. The move substantially relaxes rules on foreign investments in China. The new rules were passed on December 13, 2013, and take immediate effect.

The new rules are included in a "Catalogue of Investment Projects Approved by Government (2013)" (2013 Catalogue) and an official interpretation released by the National Development and Reform Commission (NDRC). The 2013 Catalogue replaced a similar catalogue issued by the State Council in 2004.

Under the 2013 Catalogue and NDRC interpretation, a foreign direct investment project will no longer require prior approval unless the project is either:

1. an "encouraged" project under the Foreign Investment Industrial Guidance Catalogue that is required to be controlled by Chinese investors, such as non-military helicopter's manufacturing and design. An encouraged project will be subject to prior approval by the NDRC if the total investment (or capital increase) amount is US \$300 million or more or prior approval by the provincial level or local authorities if less than that amount; or
2. a "restricted" project, such as mining exploration and exploitation. A restricted project will be subject to prior approval by the NDRC if the total investment (or capital increase) is US \$50 million or more or prior approval by the provincial level or local authorities if a restricted real estate project regardless of amount or other restricted project with a total investment amount or capital increase of less than US \$50 million.

Accordingly, a foreign investment project will no longer need prior NDRC or its local counterpart approval if it is:

1. an "encouraged" or "permitted" project that either is not required to be controlled by Chinese investors or has a total investment (or capital increase) amount of less than US \$300 million; or
2. a "restricted" project but has a total investment (capital increase) amount of less than US \$50 million.

One exception: Chinese law or policy provides that investment projects in certain sectors will be subject to NDRC or its local counterpart prior approval, no matter whether investment is made by domestic investors or foreign investors. Foreign investment projects in these sectors will still be subject to prior approval of NDRC or its local counterparts.

This change of foreign investment policy follows the November "Decision by the Central Committee of the Communist Party of China on Certain Major Issues Pertaining to Comprehensively Deepening Reform" (Decision). As a major roadmap for reforms to be implemented during the coming decade, the Decision urges liberalizing market access for foreign investors, unifying laws and regulations for domestic enterprises and foreign invested enterprises, and keeping foreign investment policies stable, transparent and predictable. Finance, education, culture and hospital sectors are to open to foreign investors in an orderly way. Restrictions on foreign investment in nursing & elderly care, construction design, accounting & auditing, trading & logistics and e-commerce sectors are to be lifted. The manufacturing industry is to be further opened to foreign investors. Unfortunately, as a general guidance, the Decision does not provide when and in what means the manufacturing industry is further opened to foreign investors. We expect that Chinese government will issue implementation rules soon.

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Compared with the 2004 Catalogue and other rules on foreign direct investment in China, the 2013 Catalogue significantly relaxed approval thresholds by the Chinese government for foreign direct investment. Prior to the changes effected by the 2013 Catalogue, a foreign investment project required prior approval by the central government if an “encouraged” or “permitted” project with a total investment (or capital increase) amount of US\$ 300 million or more, or a “restricted” project with a total investment (or capital increase) amount of US\$ 50 million or more. Other projects were either subject to provincial level NDRC approvals or other local NDRC approvals.

The following table reflects the changes implemented by the 2013 Catalogue.

The 2013 Catalogue became effective the day it was issued, December 2, 2013.