

## New Rules on Overseas Investment by Chinese Companies

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Chinese companies may be able invest up to US \$1 billion overseas without approval of the Chinese government unless the investment is in a sensitive country or industry under new rules passed by China's State Council in December 2013.

Outbound investments exceeding US\$ 300 million will be subject to a governmental filing (but not approval) requirement.

The new rules are a major milestone for Chinese government's reform and open policies adopted at the end of 1970's and are widely seen as a road map for reforms to be implemented during the coming decade. The State Council redefined reforms in 60 areas and release a wide spectrum of new policies in these areas.

On December 13, 2013, the State Council promulgated new rules substantially simplifying governmental regulation of overseas investments by Chinese investors. 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.

The 2013 Catalogue follows the November "Decision by the Central Committee of the Communist Party of China on Certain Major Issues Pertaining to Comprehensively Deepening Reform" (Decision).

The Decision urges deepening reforms in government review procedures on investment projects (including both domestic projects and overseas projects) and clarifies that investors rather than the government should be responsible for investment decisions. All investment projects, either domestic projects or overseas projects, other than those relating to national security, ecological safety, nationwide material productivity distribution, strategic resources exploration and development, and material public interest, no longer require prior approval by the government.

Compared with the 2004 catalogue and other rules on overseas investment, the 2013 Catalogue significantly simplified government examination procedures for Chinese overseas investment. Under the 2004 Catalogue rules, all overseas investment projects were subject to prior approval by, or registration with, the NDRC, the Ministry of Commerce (MOFCOM), the State Administration of Foreign Exchange (SAFE) or their local governmental counterparts. Among these approvals, central NDRC approval was required for a project with an investment amount of US \$300 million or more in energy & natural resources sectors or an investment amount of US \$100 million or more in other sectors. Central MOFCOM approval was also required for any project with an investment amount of US \$100 million or more. Of course, investment projects in sensitive countries, jurisdictions or industries were also (and continue to be under the 2013 Catalogue) subject to prior central governmental approval.

Now, under the 2013 Catalogue, only the following investment projects require prior approval by the NDRC (or other applicable central governmental agency):

- Projects with investment amounts of US\$ 1 billion or more;
- Investment projects in sensitive countries or jurisdictions. Sensitive countries or jurisdictions are those which do not have formal diplomatic relationships with China, are subject to international sanctions, have ongoing war or internal unrest, or are deemed to be sensitive by the NDRC; or

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- Investment projects in sensitive industries including basic telecommunication operations, cross-border water resources development, large-scale land development, power mains, grid, news & media or other industries deemed to be sensitive by the NDRC.

Other investments, if made by central enterprises or by local enterprises but having investment amounts of US \$300 million or more, are subject to a filing requirement with relevant central government agency in charge of the investment.

If a domestic enterprise plans to form an overseas entity (not including a financial institution) in a sensitive country or jurisdiction, or in a sensitive industry, the project will be subject to prior approval by the MOFCOM. In other cases, only prior governmental notification is required (MOFCOM for a central-level enterprise and the provincial-level government for a local enterprise). The 2013 Catalogue became effective the day it was issued, December 2, 2013.

It is noted that the 2013 Catalogue does not address those overseas investments made by local enterprise having an investment amount of less than US\$ 300 million. We expect that NDRC, MOFCOM and SAFE will revise their rules on overseas investments in the very near future and this issue will be addressed in those rules. We also expect the SAFE revisions will be more extensive than NDRC and MOFCOM. According to current rules, approvals by NDRC and MOFCOM are prerequisite for SAFE to approve wiring investment amounts overseas. If prior approvals by NDRC and MOFCOM are no longer required, banks, instead of SAFE, may play a central role in wiring the investment amount overseas.