CHINA'S NEW POLICY ON OUTBOUND INVESTMENT

On 4 August 2017, the General Office of the State Council of China promulgated the Guiding Opinions for Further Guiding and Regulating the Direction of Outbound Investments (the "Opinions") which is jointly formulated by National Development and Reform Commission ("NDRC"), the Ministry of Commerce ("MOFCOM"), the People's Bank of China ("PBOC") and the Ministry of Foreign Affairs ("MFA"). The release of the Opinions sufficiently clarifies Chinese government's attitude towards outbound investment regime.

Not surprisingly, the four major regulators above-mentioned this time jointly reach out to the regulatory regime of outbound investment, which, in fact, have been repeatedly conveying their regulatory attitude as reflected in the Opinions through public media since China's foreign exchange reserves experienced a rapid drop in the second half of 2016. Over such drop, Chinese government has increased scrutiny and tightened the control over outbound investments to prevent continuous capital outflow, especially over the increasing outbound M&A activities in industries which it deems "irrational" investment (i.e. real estates, hotels, film studios, entertainment, and sports clubs) and other unusual conducts by Chinese enterprises.

Against the above backdrop, along with the current strong promotion of the "One Belt, One Road" initiative, the Opinions just emerges in response to the proper time and conditions, which puts outbound investments into the classification management by introducing the mode of "encouraged development + negative list". Under this classification management, outbound investments by Chinese enterprises are divided into three categories – encouraged, restricted, and prohibited.

Encouraged Outbound Investments

In order to support competent and well-positioned Chinese enterprises to actively and prudently carry out outbound investment activities, to promote the "One Belt, One Road" initiative, to deepen international production capacity cooperation, to foster the export of superior capacity, high-quality equipment, and applicable technologies, to enhance China's technology research and development and manufacturing capabilities, to make up China 's shortage in energy resources, and to promote the upgrading and quality improvement of relevant industries in China, the following types of outbound investments are encouraged:

1. Focus on promoting outbound infrastructure investment that facilitates the "Belt and Road" construction and the interconnection of peripheral infrastructure.

2. Steadily carry out outbound investment that is to promote the export of superior capacity, high-quality equipment and technical standards.

3. Strengthen investment cooperation with foreign high-tech and advanced manufacturing enterprises, and encourage the establishment of R&D centers abroad.

4. On the basis of prudent assessment of economic benefits, steadily participate in the exploration and development of outbound oil and gas, minerals and other energy resources.

5. Expand cooperation on agriculture with other countries, and carry out mutually beneficial and win-win investment cooperation on agriculture, forestry, animal husbandry, fishery and other areas.

6. Facilitate outbound investment in business and trade, culture, logistics and other services areas in an orderly manner, and support qualified financial institutions to establish branches and service networks abroad and to conduct business according to the laws and regulations.

For the outbound investments fall into the "encouraged" category, it is anticipated that more favorable conditions as to regulatory procedure, tax, foreign exchange, insurance, customs, information, etc. will be given to it.

Restricted Outbound Investments

Restrict domestic enterprises from engaging in outbound investments that are not in line with the country's foreign policy of peace and development,

strategy of mutual benefit and win-win, or the macro-control policies, including:

1. Outbound investment in sensitive countries and regions that China has not established diplomatic ties with, are undergoing war, or are restricted by bilateral or multilateral treaties or agreements of which China is a signatory.

2. Outbound investment in real estate, hotels, film studios, entertainment, sports clubs and others.

3. Outbound establishment of equity investment fund or investment platform without actual, specific industrial projects.

4. Outbound investment using outdated production equipment that does not meet the technical requirements of the investment recipient country.

5. Outbound investment that does not conform to the environmental protection, energy consumption and safety standards of the recipient country.

For the outbound investments under "restricted" category, the government will increase scrutiny and policy guidance or control over them, especially investments of the first three categories listed above, which are subject to the approval of (instead of filing with) outbound investment authorities (i.e. NDRC, MOFCOM and their respective local counterparts). Chinese enterprises shall involve prudentially in the investments under "restricted" category.

Prohibited Outbound Investments

Prohibit domestic enterprises from participating in outbound investment that endanger or may endanger national interests or national security, including:

1. Outbound investment involving the export of core technology or product of the military industry without the approval of the Country.

2. Outbound investment involving the use of technology, techniques or products that are banned from export by the Country.

3. Outbound investment in industries such as gambling and pornography.

4. Outbound investment that is banned under any international treaties concluded with or signed by China.

5. Other outbound investments that endanger or may endanger national interests and national security.

Except for introducing the classification management on outbound investments as set out above, for the purpose of better implementation, the Opinions further proposes to enhance the review on the authenticity and compliance of outbound investment to prevent false investment behaviours; to establish an overseas investment blacklist and impose joint disciplinary actions on law-breaking investment activities; and to establish an information-sharing system across sectors.

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