Legal Update **February 2018**

China Desk

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China Outbound Investment Update – Regulation & Data

A series of new regulations on overseas investment have been issued during last several months, following *Measures for the Administration of Overseas Investment by Enterprises* released on December 26, 2017 and taking effect on March 1, 2018 (the "**Measures**", with only few immaterial changes to the draft released in early November, 2017, which draft we have introduced in our previous legal update) and *Guiding Opinions on Further Guiding and Regulating the Direction of Overseas Investment* issued in August 2017 (the "**Guideline**", see our legal update).

These newly issued regulations are meant to address issues arising from practice in the context of rapidly growing overseas investment, and to cut short government approval procedures. Below is a brief review of these regulations.

At the end of this article, we also summarized some data on overseas investment in the year of 2017 recently released by the Ministry of Commerce (MOFCOM) of China.

I. Catalogue of Sensitive Sectors for Outbound Investment (the "Catalogue") released by NDRC

The National Development and Reform Commission (NDRC) of China, one of the two main regulatory bodies for overseas investment, released the Catalogue on February 11, 2018. The Catalogue, in furtherance to the Measures, will also take effect as of March 1, 2018.

As provided in the Measures, sensitive outbound investments are subject to approval of NDRC, which include investments

involving sensitive countries and regions or sensitive sectors. NDRC is authorized by the Measures to publish a catalogue of sensitive sectors, hence the release of the Catalogue at this time.

Pursuant to the Catalogue, sensitive sectors include: ((1)-(3) are from the Measures)

(1) R&D, manufacture and maintenance of weapons (added by the Measures);
(2) cross-border water resources development and utilization;
(3) media and news; and
(4) Sectors in which outbound investment should be restricted under the Guideline, respectively: real estate, hotels, movie theaters, entertainment, sports clubs, and overseas equity investment funds / investment platforms with no specific projects.

The requirement that outbound investment in sectors included in the above item (4) should be subject to approval of relevant authorities has been mentioned in the Guideline, thus MOFCOM as the other main regulatory body for overseas investment is expected to update its version of sensitive sectors which should also be consistent with the Guideline.

II. Interim Measures for the Filing (Approval) and Reporting of Outbound Investment (the "Interim Measures") issued by MOFCOM

As one of the attempts to solve the institutional problems in existing outbound investment regulation, such as multiple regulatory bodies as a major hindrance, the gap between the diversified investments and outdated regulation, etc., MOFCOM, People's Bank of China (PBC, the central bank of China), State-owned Assets Supervision and Administration Commission (SASAC), China Banking Regulatory Commission, China Securities Regulatory Commission, China Insurance Regulatory Commission and State Administration of Foreign Exchange (SAFE) jointly issued the Interim Measures. As a basis for guiding outbound investment, the Interim Measures have formulated certain concrete measures.

Similar to inbound investment regulation and in line with the Guideline, "Encouraged Areas + Negative List" will be applied in regulating outbound investment, the mechanism and details of which are to be formulated. In addition, to determine a uniform

standard of approval and filing process, entity established in ultimate destination instead of any related shell company shall be filed or recorded, while investments by such ultimate destination entities will not be subject to filing or approval.

III. Codes of Conduct for Overseas Investment and Management of Private Enterprises (the "Codes")

NDRC, MOFCOM, PBC, the Ministry of Foreign Affairs and the All-China Federation of Industry and Commerce jointly issued the Codes. The Codes focus on five aspects of overseas business and investment, respectively to improve management, to comply with local laws and regulations, to fulfil social responsibilities, to observe environmental laws, and to implement risk control.

IV. 2017 Outbound Investment Review

According to a press release of MOFCOM on January 16, 2018, in the year of 2017, domestic investors have made non-financial overseas direct investment (ODI) in 6,236 overseas enterprises in 174 countries and regions, with a total amount of 120.08 billion USD, a year-on-year decrease of 29.4%. Irrational investments have been effectively contained. 6,172 overseas-invested enterprises were filed and approved by MOFCOM and provincial-level commerce authorities, of which 6,122 were filed and 50 were approved. MOFCOM summarized the following features of ODI in 2017:

- **"Belt and Road" investment.**

  Steady progress in ODI has been seen in countries along the "Belt and Road"; 14.36 billion USD was invested in 59 countries, accounting for 12% of the total amount and up 3.5% over the same period of last year.

- **Drop in ODI gradually narrowed and sectors invested were more optimized.**

  In November and December, China's non-financial ODI grew by 34.9% and 49% respectively year-on-year, which further narrowed the decline of ODI in 2017. Investment in the following sectors including leasing and business services, wholesale and retail, manufacturing, and telecommunications, software and IT services accounted for 29.1%, 20.8%, 15.9% and 8.6% respectively, together 74.4% of the total amount. There is no new ODI in real estate, sports

and entertainment sectors (which are among the sensitive sectors in the Catalogue and Guideline).

- **Active overseas M&A with a high percentage of overseas financing.**

  In 2017, Chinese enterprises completed 341 M&A deals in 49 countries and regions, with an aggregate actual transaction value of 96.2 billion USD, of which 21.2 billion USD was direct investment, accounting for 22%, and 75 billion USD was through overseas financing, accounting for 78%.

- **Contracting projects.**

  782 newly signed contracting projects amounting to more than 50 million USD totaled 197.74 billion USD.

- **Overseas economic and trade cooperation zones.**

  As of the end of 2017, 99 overseas economic and trade zones were established in 44 countries with a total investment amount of 30.7 billion USD, of which 5.79 billion USD was newly invested in 2017. 2.24 billion USD of taxes and fees paid to the host countries, creating 258,000 local jobs.

We would be happy to answer any questions that you might have.

Sincerely,

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