

Measures for the Administration of Overseas Investment of the PRC

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

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Issued by the Ministry of Commerce on September 6, 2014

Ministry of Commerce Order [2014] No. 3

Effective: October 6, 2014

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Chapter I — General Provisions

Article 1 — These Measures are formulated in accordance with the Administrative Licensing Law of the People's Republic of China, the Foreign Trade Law, and relevant laws and administrative regulations, for the purpose of promoting, regulating, and facilitating overseas investment by Chinese enterprises, safeguarding the legitimate rights and interests of enterprises, and further streamlining administrative procedures.

Article 2 — For the purposes of these Measures, "overseas investment" means the establishment of a new enterprise, acquisition of an existing enterprise, acquisition of equity interests, provision of loans, or any other means by which an enterprise established within the territory of the People's Republic of China (hereinafter referred to as an "enterprise") obtains ownership, control, management rights, or other rights and interests in respect of an enterprise or assets outside the territory of the People's Republic of China.

Article 3 — Enterprises engaging in overseas investment shall comply with the laws and regulations of the People's Republic of China and of the host country or region, shall respect local customs and social norms, and shall fulfill their social responsibilities. The state shall protect the legitimate rights and interests of enterprises in their overseas investment activities.

Article 4 — The Ministry of Commerce and the commerce authorities of provinces, autonomous regions, municipalities directly under the Central Government, cities under separate state planning, and the Xinjiang Production and Construction Corps (hereinafter referred to as "commerce authorities") shall be responsible for the administration, supervision, and guidance of overseas investment by enterprises.

Article 5 — The commerce authorities shall establish an overseas investment administration system that combines filing and approval, with filing as the main approach, to promote the liberalization and facilitation of overseas investment by enterprises.

Chapter II — Filing and Approval Procedures

Article 6 — Overseas investment by enterprises shall be administered under either a filing system or an approval system, based on the nature and scope of the investment and the country or region of investment.

Article 7 — The filing system shall apply to overseas investment by enterprises in the following circumstances:

- (1) investment by an enterprise whose Chinese investment amount is between USD 100 million and USD 300 million, which shall be filed with the Ministry of Commerce;
- (2) investment by a central enterprise whose Chinese investment amount is less than USD 100 million, which shall be filed with the Ministry of Commerce;
- (3) investment by a local enterprise whose Chinese investment amount is less than USD 300 million, which shall be filed with the provincial commerce authority;
- (4) investment that does not fall within the scope of the approval system and is not in a sensitive country or region and does not involve a sensitive industry.

Article 8 — The approval system shall apply to overseas investment by enterprises in the following circumstances:

- (1) investment in a country or region that has not established diplomatic relations with the People's Republic of China, or in a country or region subject to international sanctions;
- (2) investment in a country or region experiencing war, civil unrest, or other exceptional circumstances;
- (3) investment involving sensitive industries, including but not limited to the development, production, or maintenance of weapons or military equipment, the exploitation and processing of cross-border water resources, or the operation of news media;
- (4) investment by an enterprise whose Chinese investment amount exceeds USD 300 million;
- (5) investment in a country or region restricted under the relevant rules and policies published by the State Council or the Ministry of Commerce.

Article 9 — An enterprise applying for filing shall submit the following materials to the commerce authority:

- (1) a filing application form, which shall include the basic information of the enterprise, the basic information of the overseas enterprise or project, and the amount and source of investment;
- (2) the business license of the enterprise;
- (3) the board resolution or shareholders' resolution approving the overseas investment;

(4) the articles of association or joint venture contract of the overseas enterprise;

(5) other documents that may be required by the commerce authority based on the specific circumstances of the investment.

Article 10 — The commerce authority shall, within three working days of receipt of a complete set of filing materials, complete the filing and issue a Certificate of Overseas Investment by Enterprises. Where the materials are incomplete, the commerce authority shall notify the enterprise within three working days of the need for supplementation.

Article 11 — An enterprise applying for approval shall submit the materials specified in Article 9, together with a feasibility study report, an environmental impact assessment report, an analysis of investment risks, and any other documents required for the specific approval case. The commerce authority shall complete the review within 20 working days of receipt of a complete application and shall either issue the approval or notify the enterprise of the refusal with reasons.

Article 12 — Where an enterprise has obtained a Certificate of Overseas Investment by Enterprises or an approval document, it shall complete the foreign exchange registration with the State Administration of Foreign Exchange or its local branch, and shall complete the relevant customs, tax, and other procedures in accordance with the law.

Chapter III — Standards and Requirements

Article 13 — An enterprise engaging in overseas investment shall have a sound corporate governance structure, sound financial conditions, and the capacity to manage international operations and risks. The enterprise shall not engage in overseas investment through false representations, fraudulent means, or other improper conduct.

Article 14 — An overseas investment enterprise shall establish a sound internal control and risk management system, shall strengthen compliance management, and shall prevent and mitigate political, legal, operational, and financial risks in its overseas operations.

Article 15 — An enterprise shall truthfully report the source of its investment funds and shall not use funds obtained through illegal means, including money laundering, tax evasion, or capital flight, for overseas investment. The enterprise shall comply with the foreign exchange administration regulations in the remittance and repatriation of investment funds.

Article 16 — The enterprise shall complete its overseas investment within two years from the date of obtaining the filing certificate or approval document. Where the enterprise fails to complete the investment within the prescribed period, it shall apply to the original filing or approval authority for an extension or for invalidation of the original certificate or approval.

Chapter IV — Supervision and Administration

Article 17 — An enterprise that has completed overseas investment filing or approval shall, within 30 days after the establishment of the overseas enterprise or the acquisition of the overseas equity or assets, report the completion to the commerce authority by submitting the certificate of registration or incorporation of the overseas enterprise and other relevant documents.

Article 18 — An enterprise shall submit periodic reports on its overseas investments to the commerce authority. The reports shall include, among other things:

(1) the operational and financial status of the overseas enterprise;

(2) any material changes in the overseas enterprise, including changes in shareholding, directors, or business scope;

(3) any major incidents affecting the overseas enterprise, including expropriation, nationalization, war, civil unrest, or significant litigation;

(4) the implementation status of social responsibility and environmental protection obligations.

Article 19 — The commerce authority shall establish a credit record system for overseas investment by enterprises, shall publish a list of enterprises that have violated the relevant laws and regulations, and shall strengthen ongoing and ex post supervision.

Article 20 — The commerce authority may, based on the need for supervision, require an enterprise to submit additional information, may conduct on-site inspections, and may commission third-party institutions to conduct assessments. The enterprise shall cooperate and provide truthful information.

Article 21 — Where an enterprise undergoes a merger, division, or reorganization that affects its overseas investment, or where control of the enterprise changes, the enterprise shall promptly report to the commerce authority and shall complete the relevant amendment procedures in accordance with the law.

Chapter V — Legal Liability

Article 22 — An enterprise that engages in overseas investment without completing the required filing or approval procedures shall be ordered by the commerce authority to cease the investment and complete the relevant procedures within a prescribed period, and may be fined not less than RMB 50,000 and not more than RMB 100,000. Where the circumstances are serious, the enterprise may be included in the list of enterprises with poor credit and may be subject to joint disciplinary action.

Article 23 — An enterprise that provides false materials or uses fraudulent means to obtain a filing certificate or approval shall have its filing certificate or approval revoked by the commerce authority and may be fined not less than RMB 100,000 and not more than RMB 500,000. Where the case constitutes a crime, criminal liability shall be pursued in accordance with the law.

Article 24 — An enterprise that fails to submit periodic reports as required or fails to cooperate with the supervision and inspection by the commerce authority may be subject to a warning and an order for rectification. Where the enterprise fails to comply within the prescribed period, it may be fined and may be included in the credit record of overseas investment enterprises.

Article 25 — Where an enterprise's overseas investment endangers the national security or public interest of the People's Republic of China, the commerce authority shall order the enterprise to take remedial measures, including the suspension or cessation of the investment, and may impose penalties in accordance with the law. Where the case constitutes a crime, criminal liability shall be pursued in accordance with the law.

Chapter VI — Supplementary Provisions

Article 26 — Overseas investment by enterprises in the Hong Kong Special Administrative Region, the Macao Special Administrative Region, and the Taiwan region shall be administered with reference to these Measures, subject to the special policies and arrangements of the state in respect of investment in these regions.

Article 27 — The overseas investment of financial institutions shall also be subject to the relevant regulatory requirements of the financial regulatory authorities, in addition to compliance with these Measures.

Article 28 — Enterprises engaged in overseas investment through overseas branches or representative offices that have been established in the ordinary course of business and that do not involve the outbound transfer of capital, new share subscriptions, or provision of guarantees shall report such activities in accordance with the relevant regulations and shall not be required to complete separate filing or approval procedures for each instance.

Article 29 — The Ministry of Commerce shall be responsible for the interpretation of these Measures.

Article 30 — These Measures shall take effect as of October 6, 2014. The Measures for the Administration of Overseas Investment (Ministry of Commerce Order [2009] No. 5) shall be repealed simultaneously.

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