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NDRC DELEGATES APPROVAL AUTHORITY FOR OUTBOUND INVESTMENTS

Introduction

On 14 February 2011, the National Development and Reform Commission (**NDRC**, the primary government agency responsible for outbound investments) promulgated the *Notice on the Delegation of Approval Authority for Overseas Investment Projects* (**Notice**). The Notice delegates greater approval authority for outbound investments to the provincial Development and Reform Commissions (**DRCs**) and the holding companies of certain large, state-owned enterprises (**Central SOEs**).

As their name suggests, the DRCs are the provincial arms of the NDRC. The Central SOEs comprise the holding companies of 121 conglomerates, of which the State-Owned Assets Supervision and Administration Commission is the majority shareholder on behalf of the State Council.

Under the 2004 *Interim Administrative Measures for Overseas Investment Projects* (**Measures**), the DRCs were originally granted the authority to approve outbound investment projects not exceeding USD 30 million (resource projects) or USD 10 million (non-resource projects) in Chinese investment. The Notice is significant because it expands the DRCs' approval authority tenfold, to USD 300 million and USD 100 million, respectively. This, in turn, sharply reduces the need for Chinese investors to obtain approval at the central government level for outbound investments.

However, the Notice neither resolves latent ambiguities in the Measures nor eliminates the potential need for multiple layers of approval – both internal and external.

This newsletter summarizes, and provides a brief analysis, of the Notice's key provisions.

Key Provisions

1. <u>Delegation of Approval Authority</u>

   As illustrated in the chart below, the Notice authorizes the DRCs and Central SOEs to approve projects 10 times larger than those they were authorized to approve under the Measures some 7 years ago:

	Approval Limits Under the 2004 Measures	Approval Limits Under the 2011 Notice
State Council	• Resource Projects: above USD 300 m • Others: above USD 100 m	Not mentioned.
NDRC	• Resource Projects: USD 30 m and above • Others: USD 10 m and above	• Resource Projects: USD 300 m and above • Others: USD 100 m and above
DRCs and Central SOEs	• Resource Projects: up to USD 30 m • Others: up to USD 10 m	• Resource Projects: up to USD 300 m • Others: up to USD 100 m

2. Expansion of the Definition of "Special Projects"

The Measures stipulate that "Special Projects" must be approved by the NDRC and/or the State Council regardless of their transaction size. This means that the NDRC will conduct an initial review of all such projects, and may then decide whether to formally submit them for State Council approval. However, the Measures and Notice do not stipulate under which circumstances the NDRC should, or will, involve the State Council.

Under the Measures, "Special Projects" are defined as investment projects in the territory of Taiwan, and in other countries, with which China does not have formal diplomatic relations. The Notice expands the definition of Special Projects to also cover those in countries or regions where there are ongoing wars or turmoil, as well as projects involving infrastructure, telecommunications operations, cross-border water resources, large-scale land development, backbone electrical grids, news, media and other sensitive industries.

To ensure that the NDRC and State Council are able to exercise their approval authority over Special Projects effectively, the Notice requires the DRCs to report in detail about all of the projects that they are reviewing - before approving the same - where the investment amount involved is higher than USD 30 m for resource projects, and higher than USD 10 m for other projects. This enables the NDRC (and the State Council, if involved) to block any project that it considers to be "special", which the competent DRC might otherwise treat as a regular investment application.

In contrast, the Central SOEs must only report investments to the State Council after they have already taken place. Moreover, this requirement only applies where the projects in question involve investment of over USD 30 m (resource projects) or USD 10 m (others).

Analysis

From 2004 to 2010, China's total outbound investment increased exponentially from USD 5.5 billion to USD 59 billion under a governmental approval process that basically remained unchanged, and without the NDRC and State Council's respective roles having been clearly delineated. During that period, there were many reports of slow and delayed approvals, as well as complaints about the non-transparent nature of the approval process – particularly insofar as the NDRC was involved.

Accordingly, the Notice is a welcome step towards achieving a more stream-lined, efficient and transparent approval process. It is also expected to help avoid relatively risky investments in countries undergoing strife and/or countries that do not maintain diplomatic relations with the PRC.

The Notice indicates the Chinese government's intent for the NDRC to remain actively involved in the overall decision-making process for outbound investments from China. For a country that is leading the world in cross-border investments, predominantly via state-owned enterprises, it arguably makes sense for the government to maintain the NDRC's involvement while alleviating its workload in order to improve the overall efficiency of the approval process.

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