



**PRC Law Newsflash
4 May 2009**

**PRC Government Issues New Regulations to Stimulate
Foreign Venture Capital Investments**

Background

On 5 March 2009, the Ministry of Commerce (**MOFCOM**, formerly the Ministry of Foreign Trade & Economic Cooperation) issued the *Notice on the Approval of Foreign-invested Venture Capital Investment Enterprises and Venture Investment Management Enterprises (Notice)*.

The Notice is intended to streamline and simplify the approval procedures for foreign VC investments. Such procedures were originally implemented in early 2003 pursuant to the *Provisions Concerning the Administration of Foreign-invested Venture Capital Investment Enterprises (Provisions)*, which were jointly promulgated by the MOFCOM, the Ministry of Science and Technology, the State Administration for Industry and Commerce, the State Administration of Taxation, and the State Administration of Foreign Exchange.

Key Changes

1. Approval Process

Under the Provisions

Under the Provisions, foreign-invested VC entities in China were subject to the jurisdiction of the MOFCOM at the central level. The latest version of the *Catalogue for the Guidance of Foreign Investment Industries* issued in 2007 does not classify VC entities as being either "encouraged" or "restricted" for foreign investment. However, in practice, the MOFCOM has strictly controlled their establishment.

To set up a foreign-invested VC enterprise, the Provisions required both a review by the relevant provincial MOFCOM bureau and approval from the central MOFCOM. The application process was complicated and painstaking, frequently lasting 6 months or longer.

Under the Notice

The Notice introduces a more streamlined and efficient approval process. It provides that applications to establish foreign-invested VC enterprises with a total registered

capital of less than US\$100m only require the approval of the relevant provincial MOFCOM bureau or the authority in charge of the relevant state economic and technological development zone (**SETDZ**), if the enterprise is to be set up in one. Apart from increases in registered capital beyond US\$100m, or changes in the "requisite investor" (必备投资者, which is similar to a general partner of an LLP), any other changes to an existing VC enterprise only require approval from the provincial MOFCOM or the SETDZ authority.

2. Approval Period

The provincial MOFCOM or SETDZ authority must issue its decision within 30 days after receiving the approval application documents, and is not permitted to delegate its approval authority to a lower level. Any questions that arise during the review and administration process must be reported to the central MOFCOM. The central MOFCOM is entitled to withdraw approval authority from a provincial MOFCOM bureau or SETDZ authority if they violate the rules on how to conduct an approval review.

TAL Commentary

Promoting Foreign Investment

Over the past few years, the Chinese government has been attempting to facilitate foreign investment in certain industries and to simplify the related approval procedures. For example, the central MOFCOM has delegated to its provincial bureaus the authority to approve foreign investment in sectors such as advertising and retail, so as to encourage and stimulate such investments via less complicated and stringent approval processes.

In the case of foreign-invested VC enterprises, these efforts began in 2006, when the MOFCOM released for public comment its draft *Measures for the Administration of Foreign-invested Venture Capital Investment Enterprises*. The measures contemplated that the statutory minimum for the total cumulative management capital of a requisite investor for setting up a VC enterprise in China would be lowered from US\$100m to US\$60m. Although they were never promulgated, these measures clearly signaled the government's intention to encourage foreign-invested VC enterprises. The Notice is a continuation of this approach.

Domestic vs. Foreign VC Enterprises

At the local level, many cities, including Shanghai, Suzhou, Ningbo and Tianjin, have issued preferential policies relating to VC enterprises as a means of attracting investment and stimulating local economies. To date, however, while domestic VC enterprises have been flourishing, the growth of foreign-invested VC enterprises has been slow. This could be attributed to the lengthy and complicated approval procedures, and their uncertain outcome, under the Provisions. The changes brought about by the Notice have addressed these issues to some extent and may therefore foster the growth of foreign-invested VC entities in China.

Conclusion

The Notice officially articulates an important government initiative to promote and fast-track the establishment of foreign-invested VC enterprises, no doubt triggered in part by the global financial crisis and the need to encourage growth in the Chinese economy. Factors such as these are likely to lead to further initiatives in the development and rejuvenation of this sector.

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