

China Loosens Procedures for Approving Foreign Investments

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China remains one of the most dynamic economies in the world. Even after the slump of international markets in late 2008, China's revised projections for its economic growth in 2009 exceed 6%. Many countries would be glad to see growth rates at a fraction of the rate in China.

Although China's projected GDP growth remains high, economic troubles elsewhere in the world—and perhaps the strengthening yuan—have led to a slight decline in foreign investment into China since October 2008. Beijing has responded with a series of measures designed to encourage new investment. Most recently, the PRC Ministry of Commerce (“MOFCOM”) issued a Notification concerning Further Improvement of Foreign Investment Approving Process (“Circular 7”) and a Notification concerning Delegation of Approving Authority Relating to Foreign-Invested Investment Company (“Circular 8”) aimed squarely at making the process of foreign investment in China simpler and faster.

The New Circulars

The role of the central government in China is both extensive and intrusive. If a foreign investment project requires approvals from Beijing, and many do, investors often face long delays while the political, national security and macroeconomic issues implicated by the project work their way through the various interested ministries. Even where the only significant aspect of a new project is its size, Beijing has up to now insisted on reviewing and approving new investments itself, rather than leaving the job to provincial-level authorities.

Circulars 7 and 8 liberalize this process, taking some of the workload off the officials in Beijing and, hopefully, streamlining the approval process for foreign investors. The new Circulars permit the provincial branches of MOFCOM (normally referred to as the Commissions of Foreign Trade and Economic Cooperation, or “COFTECs”) to pass on the following types of foreign investment projects and changes to existing projects¹:

¹ Please note, the projects in Encouraged Categories are still subject to other authorities' approvals under relevant rules and regulations. In some cases, those other approvals can only be granted by the relevant authority's central office in Beijing.

1. Establishment of a foreign-invested investment company ("Investment Company") with no more than US\$100 million registered capital (previously, the establishment of a foreign-invested investment company required review and final approval by MOFCOM in Beijing);
2. Any amendment to the charter of an existing Investment Company, except for any increase of registered capital by more than US\$100 million or any amendment resulting from a change of investors (previously, any amendment to the charter of an existing Investment Company required review and final approval by MOFCOM in Beijing);
3. The establishment of any foreign-invested enterprises ("FIEs") that fall into the Encouraged Industry Category, as well as any increase in their registered capital, and any changes to the terms of joint venture contracts and corporate charters (previously, the establishment of FIEs in Encouraged Categories with total investment of more than US\$100 million and less than US\$500 million, as well as any changes to their charters, required review and final approval by MOFCOM in Beijing);
4. The establishment of offshore branches by FIEs;
5. Any increase in registered capital by manufacturing FIEs involved in the automobile, agricultural transport, and automobile engine industries, where the increase is for the purpose of expanding manufacturing capacity or expanding the scope of products manufactured, including the establishment of non-independent entities in different locations;
6. Any increase in registered capital by manufacturing FIEs involved in the manufacture of motorcycles and motorcycle engines, where the increase is for the purpose of expanding manufacturing capacity;
7. The establishment of new FIEs to manufacture parts or components for automobiles, agricultural transport vehicles and motorcycles, and any increase in registered capital by existing FIEs in those sectors, where the increase is for the purpose of expanding manufacturing capacity;
8. Any changes and amendments to FIEs originally approved by MOFCOM, except for (a) any increase in registered capital by more than US\$100 million in the Encouraged and Permitted Industry Categories, and by more than US\$50 million in the Restricted Industry Category; and (b) any transfer of equity from a Chinese party to a foreign party; and
9. Any acquisition of domestic enterprises by foreign investors or FIEs where the total acquisition price is up to US\$100 million if the invested industry belongs to the Encouraged or Permitted Industry Categories, and up to US\$50 million in the case of investments in the Restricted Industry Category.

It remains to be seen whether these measures will actually be effective in attracting more foreign investment into China, but we believe there will be additional similar rules published by both the central government and the local governments. We will continue to monitor and provide updates on important developments.

Further information about this and other aspects of foreign investment in China can be obtained by contacting the authors, Thomas M. Shoesmith, Julian Zou, and Allison Zhu, or other members of our China Team:

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