

China's NDRC Delegates Powers to Lower Levels to Approve Overseas Investment Projects

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China's National Development and Reform Commission (NDRC) issued a "Notice Concerning Delegation of Powers to Lower Levels to Approve Overseas Investment Projects" (the Notice) on February 14, by which NDRC delegated to provincial levels the authority to approve overseas investment projects, established a system of project registration, streamlined further the administration of project filings, adjusted the time period within which the project information report must be submitted, and provided for in detail the circumstances under which NDRC or the State Council would be the approval authority.

Under the "Interim Measures for the Administration of Examination and Approval of the Overseas Investment Projects" promulgated by NDRC in 2004 (the 2004 Measures), NDRC was the approval authority when an investment in the industries of resource exploration and acquisition (the Resource Industries), such as crude oil and mining, made by a Chinese entity met or exceeded US\$30 million, or the foreign exchange amount used in an investment in other industries reached US\$10 million. The Notice increases the above-mentioned thresholds by a factor of 10, to US\$300 million and US\$100 million, respectively, and does not use the term "foreign exchange amount." The Development and Reform Commissions (the DRCs) at the provincial level will be the approval authorities where the overseas investments are below the above-mentioned thresholds.

Notwithstanding the delegation of powers to lower levels, the Chinese government will exert tighter control and stricter administration of overseas investments. The Notice provided that the DRCs at the provincial level must register with NDRC all investment projects under their approval with investment amounts greater than US\$30 million in the Resource Industries or greater than US\$10 million in other industries. For those projects conducted by enterprises administered by the Central Government, filing with NDRC is required. However, the administration of information reports has been loosened. The 2004 Measures required that the information reports of all the bidding and acquisition projects be submitted to NDRC, but the Notice only requires that information reports be submitted for projects with investment amounts equaling or exceeding US\$100 million.

Another major change is the expanding and detailing of the circumstances under which NDRC or the State Council will be the approval authority. Under the 2004 Measures, investment projects in Taiwan and countries that have not established diplomatic relations with China are subject to the approval of NDRC or the State Council. The Notice expands that oversight to investment projects in countries and territories subject to international sanctions, or at war or in a state of unrest, as well as to investment

projects related to telecommunication infrastructure and operation, development and utilization of transboundary water resources, large-scale land development, route networks, news media, and other sensitive industries.

As the approval authority is delegated to provincial levels, we expect that the approval process of overseas investment projects will be more efficient and predictable, which will, to a large extent, facilitate the consummation of these investment projects.

If you have any questions or would like more information on the issues discussed in this LawFlash, please contact any of the following Morgan Lewis attorneys:

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