

# Loosening Current Restrictions, While Implementing New Ones--Notice on Further Improving the Administrative Measures for Foreign-Funded Investment Companies Issued

*February 7, 2012 by Sheppard Mullin*

The Ministry of Commerce and the State Administration of Foreign Exchange jointly released the Notice on Further Improving the Administrative Measures for Foreign-Funded Investment Companies ("the Notice") on Dec 8, 2011. While amending some of the current regulations on foreign-invested investment companies, the Notice also sets some new restrictions.

1. Foreign-invested investment companies must be designated as "investment company".

The Notice imposes a heightened requirement on the verification and management of the statistical information required in the review and approval of foreign-invested investment companies. Once a foreign-invested investment company is approved, it must be clearly designated as an "investment company" in the Basic Information Form of the Foreign-Invested Enterprises. Other types of foreign-invested companies shall not be designated as "investment company", "investment holding" or other similar designations.

2. Domestic loans shall not be used for domestic reinvestment purposes.

Article 2 of the Notice prohibits that domestic loans obtained by foreign-invested investment companies be used for domestic reinvestment purposes. However, concepts such as "domestic loans" and "domestic reinvestment" still need to be further defined and clarified.

3. Certain restrictions on investments by foreign-invested investment companies are loosened.

According to Article 1 of the Notice on Operation Guidelines for Issues Concerning Capital Verification Inquiry Into Foreign-Funded Investment Companies' Reinvestment issued by the State Administration of Foreign Exchange on March 29, 2011, a foreign-invested investment

company can only use its lawfully earned domestic income to reinvest in China after such income has been capitalized as its registered capital. However, Article 3 of the newly released Notice provides two options for foreign-invested investment company to invest in China with its lawfully earned domestic income (including RMB profits, recovery of investment and income derived from liquidation, equity transfer and capital reduction, etc.): (1) use such income directly for domestic investment upon the approval of the local foreign exchange bureau where the company is located; or (2) capitalize such income as registered capital (either by contribution or increase of capital) and then make domestic investment. Therefore, more options become available for foreign-invested investment companies to invest with their lawfully earned domestic incomes.

While the Notice sets new restrictions for foreign-funded investment companies, it also in some ways loosens certain existing restrictions. Its effects on foreign-invested investment companies are not clear and remain to be seen.