

# **MOFCOM Decree No.3, 2014**

## **Administrative Measures on Outbound Investment**

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The Measures for Overseas Investment Management, as deliberated and adopted at the 27th executive meeting of the Ministry of Commerce on August 19, 2014, are hereby issued and shall come into force on October 6, 2014.

Minister: GAO Hucheng

September 6, 2014

### **China Measures for Overseas Investment Management**

#### **Chapter I. General Provisions**

**Article 1** To promote and regulate overseas investment, these Measures are formulated according to the Decisions of the State Council on Investment System Reform and on Setting Administrative Licensing for Necessarily Retained Matters Subject to Administrative Examination and Approval.

**Article 2** The term "overseas investment" as mentioned in these Measures means that an enterprise legally established in China (hereinafter referred to as the "enterprise") sets up a new non-financial enterprise overseas or acquires the right to own, control or manage an existing non-financial enterprise overseas in the way of merger or acquisition.

**Article 3** Enterprises making overseas investment shall independently make decisions and assume sole responsibility for their profits or losses.

**Article 4** In their investment overseas, the enterprises shall:

- (1) Not harm China's national sovereignty, security and public interests or violate China laws/regulations;
- (2) Not harm China-foreign relationships;
- (3) Not violate international treaties or agreements that China has concluded or joined;
- (4) Not export the products and technologies that China has prohibited from export.

**Article 5** The MOFCOM shall be responsible for administering and supervising overseas investment. The competent departments of commerce of the provinces, autonomous regions, municipalities and Xinjiang Production and Construction Corps (hereinafter referred to as the "provincial commerce departments") shall be responsible for administering and supervising the overseas investment within their respective administrative regions.

#### **Chapter II. Registration & Approval**

**Article 6** The Ministry of Commerce and the provincial commerce departments shall apply registration and approval to enterprises' overseas investment. The approval shall be applied to the overseas investment in sensitive countries, regions and industries; the overseas investment in other situations shall be subjected to the registration.

Article 7 The countries subject to approval are those without diplomatic relationship with the P. R. China and those under UN sanction; the industries subject to approval are those involving export of China-restricted products and technologies.

Article 8 The Ministry of Commerce and the provincial commerce departments shall maintain an "Overseas Investment Management System"(hereinafter referred to as the "Management System"). An Enterprise Overseas Investment Certificate (hereinafter referred to as the "Certificate", see Annex 1 for its format) shall be issued to an approved enterprise. The Certificate shall be uniformly printed and coded by the Ministry of Commerce and provincial commerce departments.

1. making overseas investment with the amount of investment of the Chinese party being USD 10 million up to USD 100 million;
2. making overseas investment in the field of energy or minerals; or
3. making overseas investment which needs to attract capital from within China.

Article 9 Regarding the overseas investment subject to registration, a Central Government-owned enterprise shall be registered with the MOFCOM, while local enterprises shall be registered with provincial commerce departments. An enterprise making any overseas investment shall make and submit an Overseas Investment Registration Form (hereinafter referred to as the "Registration Form", see Annex 2 for its format) through the Management System, along with its business license copy. The MOFCOM shall give registration and certificate within 3 workdays upon receipt of the Registration Form.

Article 10 Regarding the overseas investment subject to approval, the Central Government-owned enterprises shall file application to the MOFCOM while local enterprises shall apply to the MOFCOM via provincial commerce departments.

In application for the approval, the enterprises shall submit the following materials:

- (1) Application form, containing the information of investor, overseas firm, equity structure, investment amount, operational scope, operating period, fund source, investment project, etc.
- (2) Overseas Investment Application Form (see Annex 3) with stamp;
- (3) Overseas investment contract or agreement;
- (4) Documents of export permit;
- (5) Business License copy

Article 11 Before the Ministry of Commerce approves an overseas investment, the opinion of (the economic and trade counselor's office of) the embassy or consulate of China in a foreign country or region shall be solicited. If a Central Government enterprise is involved, the Ministry of Commerce shall be responsible for soliciting the opinion; if a local enterprise is involved, the provincial commerce department shall be responsible for soliciting the opinion.

To solicit opinions, the Ministry of Commerce or the provincial commerce departments shall provide (the economic and trade counselor's office of) the embassy or consulate of China in a foreign country or region with the basic information on the investment and other relevant information.

The (economic and trade counselor's office of the) embassy or consulate of China in a foreign country or region shall make a reply within 7 workdays after receiving the letter of request for opinion.

Article 12 The MOFCOM shall, within 20 workdays upon acceptance of the application from Central Government enterprises, make the decision of whether to approve or not. If the application materials are short or non-compliant, the MOFCOM shall notify the applicant of shortage or correction within 3 workdays; regarding the failure to timely notify, the MOFCOM shall be deemed having accepted the application.

The provincial commerce departments shall, within 15 workdays upon acceptance of the application from local enterprises, deliver their opinions and all application materials to the MOFCOM. If the application materials are short or non-compliant, the provincial commerce departments shall notify the applicant of shortage or correction within 3 workdays; regarding the failure to timely notify, the provincial commerce departments shall be deemed having accepted the application. The MOFCOM shall, within 15 workdays upon receiving the opinions of provincial commerce departments, make the decision of whether to approve or not.

Article 13 Regarding the approved investment overseas, the MOFCOM shall issue written approval decision and certificate.

Article 14 Where an overseas investment is made jointly by two and more enterprises, the relatively bigger shareholder shall undertake registration or approval formalities on agreement with other shareholders. Regarding equal shareholding, one investor agreed-on shall undertake registration or approval formalities.

Article 15 Where certified investment matters have any changes, the enterprises shall undertake alteration formalities with the MOFCOM or provincial commerce departments.

Article 16 Where an overseas investment is not implemented within 2 years from its certificate date, the Certificate shall automatically lose efficacy.

Article 17 Where the enterprises terminate their registered or approved overseas investment, they shall immediately report to the MOFCOM or provincial commerce departments for receiving relevant cancel confirmation.

Article 18 The Certificate must not be counterfeited, tampered with, rented, lent or transferred in any other way. The altered, invalid or canceled Certificate shall be returned to the MOFCOM or provincial commerce departments.

### Chapter III. Standardization and Service

Article 19 Enterprises shall objectively assess their condition, capacity, in-depth research investment destination environment, actively and steadily carry out overseas investment, pay attention to risk prevention. Where domestic and foreign laws and regulations set eligibility or qualification requirements, enterprises shall obtain relevant certifying documents.

Article 20 The investing enterprises shall require its overseas firms in which they invest to comply with investment destination laws and local customs, social responsibility, environment and labor protection.

Article 21 The naming of external enterprises invested by a domestic enterprise shall comply with domestic and external laws, regulations and policies. Where a Chinese enterprise is not approved by the Chinese government, its external enterprises shall not be named with the word of "China".

Article 22 The investing enterprises shall implement personnel and property safety precautions by establishing emergency warning mechanisms and contingency plans. When emergencies occur overseas, the enterprises shall undertake proper measures in line with China's embassies (consulates) overseas and domestic authorities.

Article 23 The investing enterprises shall require the Chinese principals in a invested overseas enterprise to timely register with China's embassy (consulates or business offices) overseas in person or by letter, fax, e-mail.

Article 24 The investing enterprises shall truthfully report to the MOFCOM or provincial commerce departments of their overseas investment practices, statistics, and existing difficulties and problems.

Article 25 Where the invested overseas enterprises conduct re-investment abroad, they shall, upon completion of external legal formalities, timely report to China's commerce administrations of the re-investment. An involved Central Government enterprise shall report the re-investment through the "Management System" by filling in the Overseas Chinese-Invested Enterprise Re-investment Report Form"(hereinafter referred to as "Re-investment Report Form", see Annex 4) and delivering the stamped report to the MOFCOM; an involved local enterprise shall report the overseas re-investment through the "Management System" to provincial commerce departments as aforesaid.

Article 26 The MOFCOM is responsible for inspection and guidance of the overseas investment management by provincial commerce departments. The provincial commerce departments shall report to the MOFCOM every six months of the overseas investment situation under their administration.

Article 27 The MOFCOM will issue "Country (Region)-Specific Foreign Investment and Cooperation Guide", country-specific industrial guidelines and other documents to help enterprises understand the investment destination's conditions; will issue environment protection guidelines to instruct enterprises to operate in compliance abroad; will establish foreign investment and cooperation information service system to provide statistics, investment opportunities, investment barriers, risk warning and other information on overseas investment.

#### Chapter IV. Legal Liability

Article 28 Where an enterprise is registered and certified by providing false materials or other improper means, the MOFCOM or provincial commerce departments shall revoke its registration of overseas investment and impose corresponding administrative penalty according to law.

Article 29 Where an enterprise applies for approval by providing false materials, the MOFCOM shall issue a warning and impose administrative penalty and such an enterprise shall not re-apply for the approval within one year.

Where the enterprise obtains overseas investment approval in improper ways as fraud and bribery, the MOFCOM shall revoke its approval, issue a warning and impose administrative penalty and the enterprise shall not re-apply for the approval within three years; any constituted crime shall be prosecuted according to law.

Article 30 An investing enterprise involved in the circumstances listed in Article 4 herein shall bear corresponding legal liability.

Article 31 Where an enterprise counterfeits, tampers with, leases, lends or transfers the Certificate, the MOFCOM or

provincial commerce departments shall issue a warning; any constituted crime shall be prosecuted according to law.

Article 32 Where the overseas investment is involved in the circumstances listed in Articles 28-31 aforesaid and in other violations of these Measures, the enterprises involved shall not receive the support from the Chinese government within three years.

Article 33 Where the staff with the MOFCOM and provincial commerce departments commit malpractices as nonfeasance, abuse of power, demanding or accepting other people's property or seeking other benefits, they shall be subjected to criminal or administrative penalties.

#### Chapter V. Supplementary Provisions

Article 34 Provincial commerce departments may set appropriate working rules in accordance with these Measures.

Article 35 The "Central Government-owned enterprises" herein refer to the enterprises under China's State-owned Assets Supervision and Management Committee and their affiliated firms and other units subject to the Central Government.

Article 36 These Measures may also apply to the overseas investment by legal institutions and to the establishment of branches at abroad.

Article 37 These Measures may also apply to the enterprise investment in Hong Kong, Macao and Taiwan regions.

Article 38 These Measures shall be interpreted and construed by the Ministry of Commerce of China (MOFCOM).

Article 39 These Measures shall enter into effect on October 6, 2014 along with simultaneous repeal of their former version provided in MOFCOM Decree No.5 of 2009.

Annex 1 Enterprise Overseas Investment Certificate (omitted)

Annex 2 Overseas Investment Registration Form (omitted)

Annex 3 Overseas Investment Application Form (omitted)

Annex 4 Overseas Chinese-Invested Enterprise Re-Investment Report Form (omitted)

The Ministry of Commerce of China (MOFCOM)

August 21, 2014