



Client Alert

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China's Policy to Attract Foreign Investment Restated

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On April 6, 2010, the State Council of China issued *"The State Council's Opinions on Further Effectively Using Foreign Investment"* (the "Opinions"). The Opinions are hereby summarized as follows:

I. Encouraged Sectors and Incentive Policies

According to the Opinions, the *"Catalogue of Industries for Guiding Foreign Investment"* (the "Catalogue") jointly promulgated by National Development and Reform Commission

("NDRC") and Ministry of Commerce ("MOFCOM"), shall be amended to open more opportunities and encourage foreign investments in the high-end manufacturing industry, high-tech industry, modern service industry as well as renewable or alternative energies, energy saving and environmental protection industry.

The Opinions also stress incentive policies for certain foreign-invested projects falling under encouraged category of industries, including the priority in land supply, a discount (up to 30%) of land prices, and exemption from import duty and

value-add tax on import of certain essential goods for the qualified foreign-invested R&D centers in China before 31st December, 2010.

II. Encouraging Investment to Central-West China

The Opinions illustrate that the current “*Catalogue of Superiority Industries for Guiding Foreign Investment in Central-West China*” will be correspondingly revised according to the amendments to the Catalogue, the catalogue of labor-intensive projects will be expanded, foreign investments are encouraged in developing environment-friendly labor-intensive industries in those regions.

According to the Opinions, the preferential enterprise income tax for foreign-invested enterprises will continue in central-west regions, and the procedural efficiency will be improved for relocation of foreign-invested enterprises from east to central-west regions. The foreign-invested banks are also encouraged to start business and set up local branches in central-west China.

III. M & A Transactions

The Opinions reiterate foreign investments are welcomed to participate in restructuring domestic enterprises by means of mergers and acquisitions. A-share listed companies are encouraged to invite foreign strategic investors. At the same time, detailed national security assessment rules on M&A by foreign investors will be formulated.

IV. Capital Market

Under Article 13 of the Opinions, the State continues to support qualified enterprises to be listed overseas. However, it is still unclear whether this provision aims to loose the strict approval regime on round-trip investment by Special Purpose Vehicle (SPV) set out in the Circular No. 10 (the “*Provisions on Acquisition of Domestic Enterprises by Foreign Investors*”).

The Opinions encourage foreign investors to set up venture/equity investment enterprise. Pilot campaigns for establishing small and medium guarantee companies with foreign investments will be launched.

According to the Opinions, the State will support qualified foreign-invested enterprise to issue shares, corporate bonds and medium-term notes to the public. The scope of foreign targets of issuing RMB bonds in China will be consistently expanded.

V. Delegation of Approval Authority

The approval of foreign investment projects falling under the encouraged and permitted sectors under the Catalogue (to be amended) with total investment amount lower than USD 300 million will be delegated to the relevant local government except for those subject to approved by the State Council specifically prescribed in the “*Catalogue of Investment Projects to Be Approved by Governments*”. Previously, the threshold was USD 100 million.

VI. Commentary

Obviously, the Opinions are a political instrument showing that the Chinese

government reaffirms its open door policy.
However, the grand polices outlined in the
Opinions need implementing rules and policies

before it become a real creature for foreign
investors. It may take some time. We will keep
tracking the further developments in this regard.

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