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National Development and Reform Commission, Ministry of Commerce, People's Bank of China, Ministry of Foreign Affairs

Circular on the Guiding Opinions on Further Guiding and Regulating the Direction of Overseas Direct Investment

China Business Solution Office
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On August 4, the General Office of the State Council forwarded the Circular on the Guiding Opinions on Further Guiding and Regulating the Direction of Overseas Direct Investment by the National Development and Reform Commission (NDRC), Ministry of Commerce (MOFCOM), People's Bank of China (PBoC), and Ministry of Foreign Affairs (MOFA) (Circular No.74 of 2017 by the General Office of the State Council, hereinafter "Circular"). The guidelines set forth in the Circular classify outbound investment by corporates in China into three categories, namely encouraged, restricted, and prohibited, and aim to promote outbound investment while managing risk by controlling the direction of investment.

1. Background of the Policy

Since 2000, while promoting Go Global as a national strategy for domestic companies to develop outside of China, the country has also been easing regulations on Overseas Direct Investment (ODI) (see Figure 1 below for the background of the policy). Since the first regulation on ODI was established in 2004, the system has gradually been improved, and corporate ODIs have increased in scale. According to data released by MOFCOM, ODIs (excluding finance companies) from January to July 2017 has reached USD 57.2 billion.

Meanwhile, as ODI increases, transactions with irrationally high sums have begun to appear in real estate and hotels, cinemas, entertainment businesses, and professional sports teams. Such capital outflow is considered to be significantly impacting the financial discipline of China.

Based on this background, the NDRC and MOFCOM jointly promulgated this Circular as the parties responsible for ODI, together with PBoC and MOFA. This Circular is intended to enable a smooth growth of ODI by further utilizing markets and resources in China and other countries while hedging risk by enhancing guidance on ODI.

【Figure 1 ODI-related policies in recent years】

Policy		Description
July 2009	"Regulation on Foreign Exchange Administration regarding ODI by Domestic Entities" (Huifa No.30 of 2009 by the State Administration of Foreign Exchange (SAFE))	Clarification of foreign currency regulations related to FCY-denominated ODI, namely sources of funds, foreign exchange registration, funding, front-end expense, dividend income, annual inspection, penalties, etc.
January	"Administrative Rules for the Pilot Program of	Regulation regarding the handling of

2011	Settlement for RMB-denominated Outward Direct Investment" (Announcement No.1 of 2011 by PBoC)	RMB-denominated ODI, namely front-end expense, dividend income, cross-border bank loans for ODI, data reporting, monitoring, etc.
November 2012	"Circular on Further Improving and Adjusting Foreign Exchange Administration Policies for Overseas Direct Investment" (Huifa No.59 of 2012 by SAFE)	Clarification of the handling of FCY-denominated ODI, namely foreign exchange registration, front-end expense, non-monetary investment, registration for re-investment, dividend income, etc.
December 2013	"Catalogue of Investment Projects subject to Government Approval (2013)" (Guo Fa No.47 of 2013 by the State Council)	Simplification of ODI licensing procedure (change from approval to registration for general PJs)
January 2014	"Circular on Further Improving and Adjusting Foreign Exchange Administration Policies under the Capital Account" (Huifa No.2 of 2014 by SAFE)	Partial revision of regulations for front-end expense for FCY-denominated ODI (e.g.: abolition of regulations regarding investment limit, time limits for repatriation, etc.)
September 2014	"Administrative Measures for Overseas Direct Investment" (MOFCOM Order No.3 of 2014)	The abolition of MOFCOM Order No. 5 of 2009 and revision of regulations on ODI licensing procedure and daily management to concretize Guo Fa No.47 of 2013 by the State Council.

2. Contents of the Policy

The Circular emphasizes the necessity of categorized control on ODI. The Circular states that for encouraged ODI transactions, convenience will be improved by raising service levels in many areas including taxation, handling of foreign exchange, insurance, customs and information. On the other hand, for restricted ODI transactions, corporates are instructed to make careful decisions about entering them and limits will be imposed as necessary. Entry into prohibited ODI transactions will be strictly controlled. See Figure 2 below for the criteria for the encouraged, restricted, and prohibited categories.

【Figure 2】Criteria for ODI categorization

Encouraged Overseas Direct Investments
1) Focus on promoting ODIs in construction of "One Belt, One Road" and the connection of existing infrastructures
2) Steadily promote ODIs that facilitate the export of excellent industrial capacity, high-quality equipment and technology standards
3) Enhance collaborative investment with overseas high-tech and advanced manufacturing companies, and encourage the establishment of R&D centers overseas
4) Participation in exploration and development of natural gas, minerals, and other energy resources based on a careful assessment of economic benefits and profitability
5) Focus on expanding agricultural collaboration overseas, conducting mutually-profitable investment in agriculture, forestry, animal husbandry, side-line production, and fishery
6) Promoting disciplined ODIs in service sectors such as commerce, culture, and logistics, as well as ODIs that help qualified Chinese financial institutions to establish and legally operate offshore branches and service networks and operate based on the law

Restricted Overseas Direct Investments
1) ODIs in states that have no diplomatic relations with China or are currently at war, or sensitive states and regions in which ODI shall be limited based on a multilateral treaty or negotiation framework participated in by China ※
2) ODIs in real estate, hotels, cinemas, and professional sports teams ※
3) Establishment of equity investment funds or investment platforms which do not have any actual business operation overseas ※
4) ODIs conducted using production equipment which do not meet required technological standards in the target country
5) ODIs which fail to meet environmental, energy management, and safety standards in the target country
※ Require examination by the department in charge of overseas direct investment
Prohibited Overseas Direct Investments
1) ODIs related to the export of core military technologies and products without government approval
2) ODIs in technologies, techniques, or products that are banned for export from China
3) ODIs in gambling or sex industries
4) ODIs prohibited based on international treaties and regulations in which China participates
5) Any other ODI that will or may undermine national interests or security

3. Impact on Enterprises

By this circular, some ODIs will be limited by the categorized management, but the general direction to deregulate and facilitate ODIs has not been changed. In particular, investments in “One Belt, One Road,” which is China’s key strategy, are listed under encouraged transactions to seek further development through ODIs.

Currently, ODIs are conducted mainly by private and state-owned enterprises, and less by foreign-owned enterprises. This is because foreign-owned enterprises are capable of conducting ODIs through their overseas parent companies. However, going forward, ODI might become a viable method for local subsidiaries of foreign-owned enterprises to utilize surplus funds.

According to the Circular, prior examination and approval by authorities is required for restricted ODIs. However, specific procedures are not yet defined, and the release of details is awaited. We will continue to follow up on related information and share it as appropriate.

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