



Hong Kong

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CHINA'S NDRC TO SIMPLIFY OUTBOUND INVESTMENT RULES

China's National Development and Reform Commission (the **NDRC**), the principal regulator of Chinese outbound investments, has published proposed amendments to its outbound investment regulations aimed at simplifying and speeding up the process.

The move comes as Chinese companies continue to invest heavily overseas. In the first quarter of 2016, Chinese buyers announced 115 outbound M&A deals with a total value of US\$82.6 billion, surpassing all previous annual figures, according to a report published by Price Waterhouse Coopers.¹ The largest deal announced worldwide of the first quarter was the US\$43 billion acquisition of Swiss seed and pesticide company, Syngenta, by state-owned conglomerate China National Chemical Corporation. If successful, this will be the largest ever Chinese overseas acquisition.

In recent years, China has been gradually deregulating its regulatory framework so that the vast majority of outbound investments no longer require regulatory approval and are only subject to filing requirements. This has led to far greater certainty and fewer delays which previously put Chinese bidders at a competitive disadvantage when making overseas investments.

The NDRC's latest proposals are to amend the "Measures for the Administration of Approval and Filing of Outbound Investment Projects" (the **Measures**), and the amendments

are expected to be implemented soon after the expiry of the consultation period on 13 May 2016. The key proposals are summarised below.

Removal of State Council Approval Requirement

The Measures currently require:

- the approval of the State Council, China's principal administrative body, for outbound investments of US\$2 billion or more in sensitive countries, regions or industries; and
- Central-level NDRC approval for outbound investments involving sensitive countries, regions or industries.

The proposed amendments will remove the requirement for State Council approval. As a result, the Measures will only require Central-level NDRC approval for outbound investments in sensitive countries, regions or districts irrespective of the investment amount.

Offshore investments in sensitive countries, regions and industries additionally require separate approval from the Ministry of Commerce (**MOFCOM**) under the "Measures for the Administration of Outbound Investments".

¹ China Daily. "China's Q1 outbound M&A deal value exceeds all annual figures". 27.4.2016. http://www.chinadaily.com.cn/business/2016-04/27/content_24879113.htm

Simplification of NDRC Filing Requirements

The Measures require outbound investment projects not involving sensitive countries, regions or industries to be filed with the NDRC or its provincial counterparts. Filing with the Central-level NDRC is required for:

- outbound investments by centrally administered state-owned enterprises; and
- other outbound investments of US\$300 million or more.

All other outbound investments can be filed with the NDRC at local level.

Acknowledgement to Replace Confirmation Letter for Investments of US\$300 million or above

A problem that has persisted is that the NDRC filing procedure requires a project report to be filed for acquisitions or bids involving investments of US\$300 million or more. The NDRC will then issue a confirmation letter if the investment complies with China's outbound investment policy within 7 working days. Filing applications have been assessed according to criteria similar to those for approvals giving the NDRC considerable discretion. The proposed amendments will remove that discretion: the NDRC will no longer consider whether an outbound investment of US\$300 million or more complies with outbound investment policy. Instead, it will issue an acknowledgement letter (rather than a confirmation letter) within 7 working days of a filing application being made. This will bring the NDRC's procedures into closer alignment with the MOFCOM filing procedure. Outbound investments which do not require MOFCOM approval are subject to filing with MOFCOM or its provincial counterparts. MOFCOM's acceptance procedure is based on straightforward criteria: provided that the information in the filing is complete and accurate, it will be accepted.

NDRC to Allow Competing Chinese Bids

Although not stated in the NDRC regulations, the general view in the market has been that the NDRC would only ever issue one confirmation letter for a transaction involving an investment amount of US\$300 million or above in order to prevent competition from Chinese bidders for the same assets. The proposed amendments suggest that in future the NDRC will allow competing Chinese bids and will issue the confirmation letter to each party which files a project report.

Removal of Penalty

A project report will still need to be filed for investments of US\$300 million or more. The proposals will however remove the penalty which may currently be imposed if a Chinese investor commences "substantive work" before receipt of the NDRC's confirmation letter. "Substantive work" includes entering into a binding document in relation to a purchase (including a purchase agreement, a binding offer or a formal bidding document). Provided that a project report is filed, the investor will not be penalised for commencing "substantive work" before receipt of the NDRC's acknowledgement letter.

Removal of bank letter of intent requirement

For outbound investments requiring NDRC approval, the Measures currently require the submission of a letter from a bank expressing its intent to finance the project. Under the proposals, this document will no longer be required.

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