China has recently relaxed its outbound investment regime.

Chinese law requires either approvals or filings for Chinese outbound investments, though approvals are now only required for investments in ‘sensitive’ countries, regions or industries. The main regulators remain NDRC and MOFCOM.

Chinese private companies are beginning to become significant players in Chinese outbound investment. This, in turn, is likely to require more due diligence for those wishing to transact with them.

Over the last year, China has implemented several rounds of regulatory loosening for its outbound investment. Chinese investors, particularly those from the private sector, have responded with enthusiasm.

Outbound investments are subject to multiple interactions with various Chinese governmental authorities. The interactions include:

- pre-notification to the National Development and Reform Commission (NDRC) for certain transactions,
approvals from or filing with both NDRC and the Ministry of Commerce (MOFCOM),

for State-owned Enterprises (SOEs), filing with the State-owned Assets Supervision and Administration Commission (SASAC), and

registration with the State Administration of Foreign Exchange (SAFE).

In the past, many outbound transactions required approvals from both NDRC and MOFCOM. The uncertainty with respect to when and whether final approval would be given imposed a major competitive disadvantage for Chinese investors. The new regime now lifts the approval threshold significantly, such that the great majority of outbound investments are no longer subject to approval.

THE STATE COUNCIL CATALOGUE

China's State Council issued a revised Catalogue of Investment Projects that Require Government Verification (Catalogue) on 31 October 2014 which came into effect on the same day. The Catalogue provides that only investments that involve sensitive countries or industries still require verification and approval by NDRC.

For investments that are not in sensitive countries or industries, the Catalogue states that they would only be subject to record-filing requirements.

NDRC APPROVAL / FILING

The current NDRC rules for outbound investment were effective in May 2014 and have not yet been amended to reflect the latest Catalogue. However, in practice, the NDRC has already started implementing the rules set out in the Catalogue pending the amendment to the NDRC implementation rules. That is, only investment projects in sensitive countries or industries will be subject to NDRC verification and approval.

For this purpose, 'sensitive countries' include those with which China has no diplomatic relations, countries subject to international sanctions, and countries affected by war or civil strife. 'Sensitive industries' include basic telecommunication, cross-border water resources development and utilization, large-scale land development, main electrical grids and news media.

Other outbound investments give rise only to an obligation to file for record with NDRC or its local counterparts. If the Chinese investor is a central-level state-owned enterprise, or any other Chinese investor investing US$300 million or more, then the filing must be made at the central-level NDRC. If the Chinese investor is a local enterprise and the investment amount is less than US$300 million, then the filing must be made at the relevant provincial-level branch of the NDRC. NDRC must make a decision within seven working days after the application for filing is accepted. If NDRC rejects a filing, it must give reasons.
It is expected that NDRC will revise its implementation rules to reflect the Catalogue in the near future.

**MOFCOM APPROVAL / FILING**

MOFCOM's current rules, effective early October 2014, are broadly consistent with the Catalogue.

In short, MOFCOM only has approval authority if the investment project involves a sensitive country or region or a sensitive industry. All other investment projects, irrespective of the amounts involved, are only subject to a filing requirement which will normally be completed within three working days.

For the purpose of its requirements, MOFCOM considers a 'sensitive' country or region to be one that does not have diplomatic relations with China or which is subject to United Nations sanctions. MOFCOM may, from time to time, also declare other countries and regions as 'sensitive'.

Sensitive industries are industries involving products or technologies the exportation of which is restricted by China, or in which multiple countries/regions have an interest (for example, a cross-border railway project).

**OUTBOUND INVESTMENT TRENDS**

China's launched its 'going out' strategy at the turn of the century. Since then Chinese outbound investment has grown at an average annual rate of close to 50%, with total outbound investment being more than US$200 billion. President Xi Jinping expects China's outbound investment to reach US$1.25 trillion by 2024. In 2015, China's outbound investment is expected to outpace the flow of foreign investment into China.

One interesting feature of China's outbound investment is that the market players have been changing. For much of the 2000s, outbound investment was dominated by Chinese state-owned energy companies looking to secure foreign resources for Chinese domestic consumption.

In recent years, private Chinese companies have become more active. Private Chinese companies now account for up to 70% of outbound investment originating from some of the more prosperous eastern provinces in China. Many of these private companies are small and medium-sized enterprises.

Chinese SOEs, on the other hand, have been affected by China's current anti-corruption drive and the push for frugality. Some SOE managers have become reluctant to attract attention and hesitate to make major investments. Getting budgets approved has also become difficult.
THINGS TO WATCH OUT FOR

For counterparties looking to sell to or joint venture with Chinese outbound investors, the changing regulatory environment and market trends has a number of consequences:

• Counterparties still need to know whether a Chinese outbound investor has satisfied its approval or filing obligations, however, time delays caused by regulatory issues should be a thing of the past as the great majority of Chinese outbound investment will no longer need approval. The result is that counterparties can expect the Chinese investors to move faster.

• Going forward, the Chinese outbound market is likely to continue to be driven more by many smaller deals. Accordingly, counterparties looking to engage with Chinese investors will need to look beyond the big names of Chinese companies. In turn, this is likely to require more due diligence into, and relationship building with, the Chinese investors.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.

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