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## **2011 AMENDMENTS ON THE FOREIGN INVESTMENT INDUSTRIAL GUIDANCE CATALOGUE OF THE PEOPLE'S REPUBLIC OF CHINA**

On December 24, 2011, the National Development and Reform Commission (“NDRC”) and the Ministry of Commerce (“MOFCOM”) of the People’s Republic of China (“PRC”) jointly released the new amended *Catalogue on Industry Guideline for Foreign Investment* (the “New Foreign Investment Catalogue”). This New Foreign Investment Catalogue, which replaces the previous version of 2007, became effective on January 30, 2012.

The PRC central government first issued a Foreign Investment Catalogue in 1995 to direct foreign investment capital towards industries and sectors which it deemed, for political or macro-economic reasons, suitable of receiving foreign investment. Since its introduction in 1995, it has now been revised five times in 1997, 2002, 2004, 2007 and 2011 according to the country’s concurrent policies and needs.

The New Foreign Investment Catalogue addresses the policies and priorities set out by the National People’s Congress in the 12<sup>th</sup> Five-Year Plan in March 2011 and reflects the current industrial and macro-economic agenda of the country. Some of the new permitted industries and activities are also in accordance with PRC’s commitments undertaken when it accessed the World Trade Organization (“WTO”) in December 2001.

The New Foreign Investment Catalogue inherits the structure of its predecessors and establishes three categories of industries: prohibited, restricted and encouraged. Prohibited are those industries which are closed to foreign investment. Encouraged projects are subject to less strict approval requirements and sometimes receive tax incentives. Restricted industries have certain constraints, such as more stringent requirements by State or local authorities for approving the establishments of foreign investment entities. Lastly, industries not included in the catalogue are considered permitted and are open to foreign investment unless specifically prohibited in other PRC regulations.

### **1. NEW PROHIBITED SECTORS**

Some sectors have been added to the prohibited category in the New Foreign Investment Catalogue, namely, mail courier services and construction and operation of villas. Both sectors were already prohibited by previous PRC’s regulations in 2009 and 2006 respectively and have been included for legal consistency.

### **2. NEW RESTRICTED SECTORS**

Although the New Foreign Investment Catalogue generally eases requirements for foreign investment, a few activities have been added to the restricted category. The most important examples are the construction and operation of large scale farmers’ market, grain purchase and the collection and manufacturing of alkaline zinc manganese batteries containing mercury. Moreover, the production of vaccines listed in the state immunization plan now

require foreign investors to enter into joint ventures with a local partner and the scope of activities related to the processing of palm, peanut, sunflower and other edible oils, which already required a joint venture, has been widened to restrict the processing of more types of edible oils.

### **3. NEW ENCOURAGED SECTORS**

In the New Foreign Investment Catalogue numerous industries have been upgraded to the encouraged category, mostly related to green and high technologies and the service industry.

The environmentally-friendly and high-end manufacturing industries have been recognized as key sectors and, therefore, the New Foreign Investment Catalogue stimulates foreign investors to utilize new technologies, manufacturing processes, materials and equipment by adding many related activities to this category. The inclusion of activities such as the manufacturing of key parts for new energy automobiles, batteries and establishment and operation of its charging stations, recycling of electrical products waste, automobiles, rubber, metal or batteries, manufacturing of air and water pollution treatment equipment and manufacturing of energy conservation building materials are some examples of the direction the PRC is taking to encourage high technology and green industries.

The development and opening of the PRC's service industry is one of the big objectives set in the 12<sup>th</sup> Five Year Plan and one of its commitments when entering the WTO. The Chinese authorities are willing to learn from foreign expertise in these sectors and some modern services have been added to the encouraged category including venture capital enterprises, intellectual property services and vocational training.

### **4. NEW PERMITTED SECTORS**

New sectors have been upgraded from more restricting categories as a part of the PRC's efforts to open up certain markets such as financial leasing companies, franchise and commission businesses, medical services institutions or wholesale, retail and distribution of medical products. Other upgraded sectors are the manufacture of carbonated drinks, commodity auction services and the distribution and import of books, newspaper and magazines, and import of audio and visual products.

Furthermore, in accordance with the intent to promote development and curb overcapacity, certain sectors and industries were downgraded from the encouraged to the permitted category, such as, manufacturing of complete automobiles, polysilicon and coal chemical.

### **5. CONCLUSIONS**

Most changes introduced by the New Foreign Investment Catalogue involve an improvement of the conditions which foreign investors are subject to when investing in PRC. Foreign Investors, whether already established in PRC or considering entering, should pay close attention to the New Foreign Investment Catalogue and related regulations. Already established foreign investors should be aware of the changes introduced since, even though the catalogue does not have retroactive effects, it can ease or

affect its operations when seeking expansion or financing by requiring further MOFCOM or its local branches' approval. New Investors also should take into account the New Foreign Investment Catalogue to know beforehand the type of requirements and approvals they will encounter when entering the PRC and learn about the new business opportunities that have just arisen.