

## Legal Overview on Foreign Investment in Wind Power Sector in China

In the past 10 years, renewable energy development has undergone a significantly rapid development in China, in particular the wind power energy which enables China as one of the three Giants worldwide in terms of the total wind power installed capacity, together with the United States and Germany. Although encountering certain decrease in 2012, wind power accounts for the third power source in China and is identified as a very important alternative energy in China. As per the statistics indicated in the Twelfth Five-year Plan of Wind Power Development issued by the National Energy Bureau of China (“NEB”) on July 7th, 2012 (“Twelfth Five-year Plan”), up to the end of year 2010, the national electricity generating capability of wind power has reached 50 billion KW, accounting for 1.2% of total generating capability, and turning to the development of the next decade, NEB expects a significant growth of wind power development, which may be illustrated in the following table of wind power development target stated in the Twelfth Five-year Plan:

Main Development Target of Wind Power				
Target Categories	Main Target	2010	2015	2020
Installed Capacity	Land-based Wind Power (KWP)	3118	9900	17000
	Offshore Wind Power (KWP)	13.2	500	3000
	In Total (KWP)	3131	10,400	20,000
Generating Capacity	Total Generating Capacity (TWH)	500	1900	3900
	The Percentage of Wind Power in the Total Generating Capacity (%)	1.2	3	5

The aforementioned development target has shown the intention of the Chinese government to enhance its promotion to the wind power sector. There is no doubt that the Chinese market of wind power will be in high demand for both domestic and overseas investors, including but not limited to wind power farm, grid operation, manufacturing and trading of wind power equipments, etc. For the purpose of this article, we specially address the investment incentives granted by Chinese laws and regulations and the noteworthy legal issues for foreign investment in wind power farms in China.

### 1. Investment Incentives

Under the current legislation system, investors may find various incentives to establish themselves in wind power sector in China, both from legal and financial perspectives:

- Encouraged Status of Wind Power Farms

The 2011 versions of the *Catalogue for Industrial Structure Adjustment Guidance* and the *Foreign Investment Guidance Catalogue* continue to provide a generally favorable framework for investment in construction and operation of wind power farm both for domestic and foreign investors.

# GARRIGUES

Being an investment project with encouraged status, the approval of such project with foreign investment may be carried out before the relevant authorities of lower level, which usually means less time consuming and relatively simpler formality requirements.

- Grid Connections and Purchase Guarantee Policy

Upon completion of the wind power farm, grid connections and electricity sale may be the main concerns of investors.

As a general rule under *Chinese Electricity Law* promulgated in 1995 as well as re-started in *Chinese Renewable Energy Law* promulgated in 2005 and amended on December 26, 2009 (“*Renewable Energy Law*”), the state encourages the wind power generation company to connect to the grid, and the grid operator is obligated to fully purchase the electricity (provided that the technical standards are satisfied) generated by wind power farms. In that case, the connection agreement shall be executed, under which, the electricity will be dispatched by the grid;

To realize the connection, detailed procedures shall be handled by the generation company and the grid operator, with the relevant government authorities, such as local counterparts of National Development and Reform Committee (“NDRC”) and the local electricity supervision authorities are also involved.

The pricing of electricity generated from wind power sold by wind power farm to grid operators is subject to the benchmark published by the NDRC in its *Circular concerning Improving the Policies for On-Grid Wind Power Prices* on July 20, 2009, which may be referred as below:

Project	Benchmark Price (Since 2009)	Applicable Area
Land-based Wind Power	0.51/KWH	most parts of inner Mongolia; certain cities in Xinjiang province
	0.54/KWH	9 cities in Hebei, Inner Mongolia and Gansu province
	0.58/KWH	2 cities in Jilin province, 5 cities plus one mountain in Heilongjiang province; most parts of Gansu province/Xinjiang province/Ningxia province;
	0.61/KWH	Areas other than the above
Offshore Wind Power	To be defined	

- Financial Incentives

Other than the above, in order to stimulate investment in wind power project, Chinese authorities provides various financial supports to the enterprises at both national and local levels. We hereby introduce the following main financial incentives from the national perspective.

- Government Subsidy

In accordance with the *Interim Administrative Measures of Special Funds for Renewable Energy Development* issued by the State Council in 2006, subject to the examination of

local NDRC and local financial bureau, the enterprise invested in wind power project may apply for following subsidies:

- less than 3% interest subsidy with the term of 1-3 years for its bank loan, if the project development is listed in the *Guidance Catalog of Renewable Energy Development* issued by NDRC on November 29th, 2005;
- free fund subsidy amounting to the contribution of investors, if the project is invested for common welfare with low profit.

## ▪ Enterprise Income Tax Preferences

Under *Chinese Enterprise Income Tax Law*, generally, enterprises in China will be taxed for Enterprise Income Tax (“EIT”) at a statutory rate of 25% on the profits obtained from rendering services and sales of products in China.

For wind power industry, according to Caishui [2008] No. 46 jointly issued by the Ministry of Finance and State Administration of Taxation on September 23th, 2008, for new projects after January 1st, 2008, subject to the examination of local tax authority, the arising revenues shall be exempted from EIT for the first three years as of the taxable year to which the first revenue arising from production or operation is attributable, and shall be taxed at the reduced half rate from the fourth to the sixth years.

## ▪ Value Added Tax Preferences

According to the relevant Chinese tax rules, Value Added Tax (“VAT”) is levied on the sales of goods (including electricity). Assuming the enterprise is qualified as a general VAT payer, a general rate of 17% will be imposed on the sales of goods (including electricity), with recovery of its input VAT borne on supplies, purchases and imports by means of deducting it from the output VAT deriving from its sales.

Pursuant to Caishui [2008] No.156 jointly issued by the Ministry of Finance and State Administration of Taxation on July 1st, 2008, 50% VAT payable for sales of electricity generated from wind power can be immediately refunded after the enterprises perform their VAT payment obligations.

In addition to the above financial incentives nationwide, appealing local incentives offered by various local governments could also be further explored.

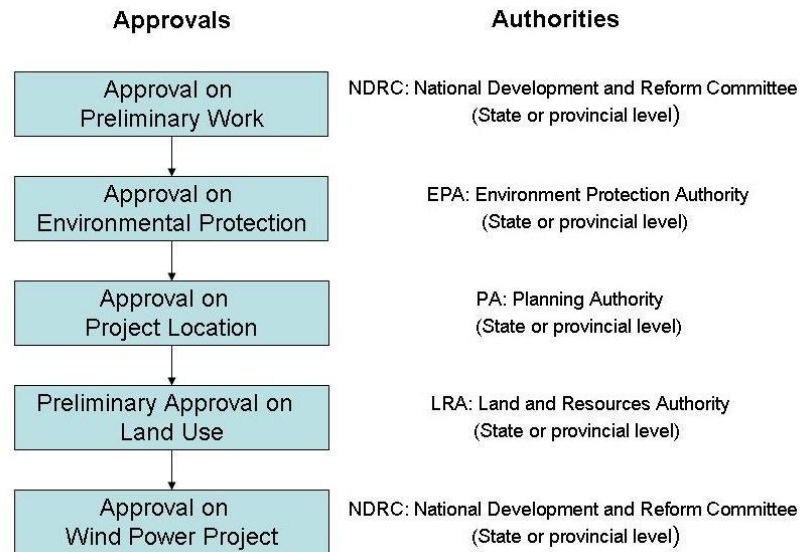
## **2. Legal Procedures for Foreign Investment in Wind Power Projects in China**

Along with the *Renewable Energy Law*, the NEB issued the *Interim Measures on the Administration of Wind Power Development and Construction* in 2011 (“*Wind Power Interim Measures*”), which provides a detailed guidance on the legal procedures and requirements to approve the wind power projects in China.

According to the *Wind Power Interim Measures* and other applicable laws and regulations, investment in wind power project in China involves examination and pre-approvals by various authorities at state or provincial levels, with regard to the environmental impact, project location, land use, etc.

# GARRIGUES

Please find below flowchart providing the main approval procedures applicable to wind power farm for general reference:



It is worthwhile to notice that, apart from the above pre-approvals to be applied one by one, the wind power farm investors shall also obtain the consent from local grid operator on the grid connection, which will also be one of the premises for the relevant NDRC to approve the wind power project.

Based on our previous experience, it may take around 1 year to complete all the above procedures, provided that the requirements of authorities can be duly satisfied. After the above approvals on wind power project issued by competent NDRC, foreign investors may launch the subsequent work by duly following applicable approvals and registrations, e.g. incorporation of a foreign invested company, purchasing of land use right for the project, construction of the project, etc. Besides, during the operation, an Electric Power Business Permit is mandatorily required to perform the electric power business in China.

### 3. Noteworthy Issues

Before launching their investments in wind power sector in China, foreign investors shall pay attention to the following issues, which have substantial impact on the final result of the investments of wind power project in China.

- Annual Wind Power Development Plans

According to the *Wind Power Interim Measures*, the NEB is responsible for the national plan of wind power construction scale and distribution, on the basis of wind energy resource assessment, market demand, land and ocean utilization, environmental protection, etc.

Based on the above national plan, the provincial renewable energy authority (department of provincial NDRC) shall formulate local annual development plan, which shall specify detailed information of local projects to be approved by provincial or state NDRC. The local annual development plan shall be filed before the NEB for record. Such annual filing list is essential for

the final approval by the competent NDRC and projects not listed in the annual development plan shall not be approved by relevant authorities.

In order to be listed into the annual development plan, investors shall submit application report of project development before provincial renewable energy authority. Such report shall contain preliminary analysis of resource and construction condition, project sale, plan and conditions of on grid, preliminary assessment on the environmental impact, preliminary analysis of economic and social benefit. Provincial renewable energy authority may also require preliminary approval of municipal NDRC, and assessment report on the envisaged project issued by qualified institutions, such as climate centre and resource assessment center.

- Grid Connection

Theoretically, as mentioned herein above, the electricity grid operators are obliged to purchase the electricity outcomes that are covered by their grid connection. However, in practice, the implementation of such requirements has encountered certain obstacles. For example, although there are now a lot of wind farms in China, many of them are not yet connected to the power grid. This is partly due to the fact that the grid connection plan is not as binding as a law and there is no corresponding penalty for not achieving the goals. Therefore the grid operators may lack motivation to set up their network to connect all renewable energy plants.

To solve this problem, on one hand, as what has been mentioned above, the NEB requires that local grid connection conditions shall be one important consideration during listing new wind power projects into their annual development plans; on the other hand, the NEB urges grid operators to develop their grid construction work and shall provide connection service to wind power projects in priority. However, the actual implementation of grid operators may subject to local practice and may not be fully controlled by the NEB. Besides, As per the *Renewable Energy Law*, it should be noted that the obligation of grid operators to accept the grid connection for wind farm power is not unconditional, and the wind farm operators shall make sure that, the power generated is in compliance with technical standards for connection and shall cooperate with the grid companies to ensure the safety of the grid.

Finally, there is no doubt that, with various national and local incentives, wind power development has become one promising investment sector in China for foreign investors. However, before implementation, other than technical research, we advise foreign investors to communicate with local authorities in advance, in order to check the investment potentiality from the perspective of government planning and grid connection status and of course also seek the opinions from lawyer in order to ensure the wind power project is legally and smoothly established and operated.