

Notice of the National Development and Reform Commission on Further Strengthening the Administration of Foreign Investment Projects

(No.1773 [2008] of the National Development and Reform Commission)

The development and reform commissions and the economic and trade commissions (economic commissions) of all the provinces, autonomous regions, municipalities directly under the Central Government, and Cities under separate state planning, as well as capital cities at the deputy provincial level, and Sinkiang Production and Construction Corps,

Since the reform of investment system of our country in 2004, a ratification system has been applied to the foreign investment projects, which has played an active role in further perfecting the environment for investment, enhancing the quality of foreign investment utilization and strengthening the macro-control. However, there still exist some problems, such as failure to strictly execute relevant regulations of the state and improper administration of foreign investment projects in some places. Some foreign investment projects started construction without ratification, some carried out construction without strictly sticking to the contents of ratification. Some investors took advantage of the fluctuations in the international capital market, the adjustment of China's foreign exchange policies and brought in funds in the name of foreign direct investment by means of establishing false equity joint ventures, making false declaration of the total investment, establishing shell companies, etc., but converted them into RMB and used them for other purposes so as to fish for unjustifiable benefits, which caused potential risks to the healthy development of our economy and international balance of payment. In order to strengthen the administration of foreign investment projects, and prevent the irregular inflow of foreign capital, and in accordance with the Decision of the State Council on Reforming the Investment System (No.22 [2004] of the State Council), the Interim Measures of the National Development and Reform Commission for the Examination and Approval of Foreign Investment Projects (No.22 of the National Development and Reform Commission), as well as the relevant provisions of other laws, regulations and rules, we hereby notify the relevant matters as follows:

I. Strictly executing the ratification system on foreign investment projects. The departments of development and reform at all levels shall examine foreign investment projects from such aspects as maintaining economic security, rationally exploiting and utilizing resources, preserving the bio-environment, optimizing strategic layout, protecting public interests and preventing monopolies, market access and capital project management, etc. The principle of establishing an enterprise after the foreign investment project has been approved shall be observed so as to prevent the establishment of a shell firm. All types of foreign investment projects, including Sino-foreign equity joint ventures, Sino-foreign contractual joint ventures, foreign-funded sole proprietorships, merger & acquisition of domestic enterprises by foreign investors, the capital increase and reinvestments of foreign-invested enterprises (including the foreign-invested enterprise which restructured by listing abroad), etc. shall be governed by the ratification system.

II. Strengthening the authentication examination of foreign investment projects. The departments of development and reform at all levels shall, when ratifying projects, check and verify the total investment of the projects on the basis of the construction scale and the main construction contents of the projects, and may, if necessary, entrust a qualified consultancy institution to make an evaluation. They shall pay attention to understanding and supervising the flow of offshore capital, strictly manage the balance between the total investment and the registered capital of the foreign investment projects, fulfill the financing plans. Where it is necessary to raise a loan abroad, they shall strictly execute the relevant provisions of the state on the administration of foreign loans. They shall strengthen the examination of the background and credit position of the overseas investors. With regard to those of dubious background or whose credit position fails to meet the requirements or whose materials are incomplete, they shall make strict examinations so as to prevent the inflow of foreign capital without real investment background.

III. Fulfilling the classified and graded administration of foreign investment projects. In accordance with the Catalogue of Industries for Guiding Foreign Investment, the application of a project in the encouraged and permitted industries with a total investment (including the increased capital, hereinafter the same) of US\$ 100

million or more, and of the restricted industries with a total investment of US\$ 50 million or more shall be subject to the examination and approval of the National Development and Reform Commission. A project in the encouraged and permitted industries with a total investment of US\$ 100 million or less and in the restricted industries with a total investment of US\$ 50 million or less shall be subject to the examination and approval of the regional department of development and reform, while a project in a restricted industry shall be subject to the examination and approval of the provincial department of development and reform, and the power to examine and approve such projects shall not be transferred to a lower-level department under any pretext or by any means.

IV. Regulating the administration of the newly-commenced projects, and rigidify the conditions for ratifying projects. The departments of development and reform at all levels shall, in accordance with the spirit of the Notice of the General Office of the State Council on Strengthening and Regulating the Administration of the Newly-commenced Projects (No.64 [2007] of the General Office of the State Council), rigidify the conditions for the newly-commenced projects. The project entity shall submit an application report to the department of development and reform. Where site-selection, pre-examination of land use, or examination and approval of environmental assessment is involved, the relevant documents shall be submitted accordingly. The examination and approval of the relevant documents shall be made by the competent departments pursuant to the procedures and powers. The projects that seriously contaminates the environment, consumes a lot of energy, materials, or resources shall be strictly restricted. For the projects for which one has failed to acquire the documents of site-selection, pre-examination of land use, examination assessment and evaluation of energy conservation as required, and the projects failing to meet the requirements for examination and approval under the Interim Measure of the National Development and Reform Commission for the Administration of Examination and Approval of Foreign Investment Projects (No.22 of the National Development and Reform Commission), they shall not be ratified by the development and reform departments at any level. The development and reform departments at all levels shall intensify communications with such departments as land and resources, environmental protection, housing and urban-rural construction, commerce (foreign economy and trade), foreign exchange administration, customs, and taxation, etc., perform their respective duties, form a resultant force, and perfect an interactive system on the administration of foreign investment projects.

V. Strengthening the supervision and examination of the ratified projects. The relevant developments shall supervise and urge the construction entities to observe the requirements of the project ratification documents, and strengthen supervision and examination at the same time of doing a good job in the statistics and information management of foreign investment projects. Where a foreign investment project that fails to the examination and approval, or for which one has acquired the ratification documents by such irregular means as dismembering or providing false materials, etc. or whose construction has failed to follow the project ratification documents, or under which the capital transferred into China has not been used in the project construction, it shall be timely rectified. If it has seriously violated the regulations, the relevant departments may cancel the project ratification documents and order it to stop construction. Any project that is found to be in any of the aforesaid situations shall not enjoy the relevant preferential policies, such as reduction and exemption of taxes in purchasing equipments, etc., and the application for IPO or bond issuance shall not be supported.

All local departments of development and reform shall unify their thoughts, voluntarily maintain the state's overall situation of macro-control, further deepen the reform of the investment system, and strengthen and regulate the administration of foreign investment projects. Simultaneously, all local departments of development and reform shall endeavor to raise their work efficiency, incessantly enhance the sense of service, and protect the legitimate rights and interests of investors. As for a project which conforms to the industrial policies and relevant requirements of the state, the local department of development and reform shall offer active guidance and support, handle the various formalities at the earliest possible date, initiatively help them remove their troubles and difficulties encountered in the process of project construction, guide foreign investment into the industries and areas encouraged by the state, promote the optimization of the industrial structure, and improve the quality and level of foreign capital utility. All investors shall strictly execute the provisions of the laws and regulations, earnestly observe the procedures for project ratification, and voluntarily accept supervision and administration.

National Development and Reform Commission

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