

# Client Update

## China's New Guidelines on Overseas Investment Likely to Spur Tighter Regulation of Investments by the PRC Insurance Regulator

On August 18, 2017, the State Council of China released a new set of guidelines on overseas investment by Chinese companies, marking a further stage in its recent attempts to restrict outbound investment and capital outflows by Chinese companies.

The Chinese government has been cracking down on what it considers “irrational” or “non-genuine” overseas investments since the end of 2016 and has tightened controls on capital outflows, but the guidelines (the “Guidelines”), which were formulated by four key Chinese regulators, the National Development Reform Commission (“NDRC”), Ministry of Commerce, People’s Bank of China and Ministry of Foreign Affairs, are the first time the government has formally issued guidance limiting such investments.

The NDRC has announced that it is formulating new administrative measures to further regulate overseas investments. The Guidelines also request other Chinese regulators to develop policies to support and implement the Guidelines. Although the Guidelines seem to have been inspired, in part, by a series of overseas investments by a number of smaller, more aggressive Chinese insurance companies, they do not directly address investments by Chinese insurance companies. Therefore the China Insurance Regulatory Commission (“CIRC”), which did not participate in the formulation of the Guidelines, may establish a more sophisticated overseas investment framework that would, on the one hand, encourage overseas expansion by the biggest and most solvent Chinese insurers, while, on the other hand, reining in the smaller and riskier insurance companies. Such investment guidelines would likely distinguish among Chinese insurers based on their assets under management, solvency ratios and risk tolerance.

The most recent Guidelines classify overseas investments into three categories: encouraged, restricted and prohibited, with different treatment for each category. Any overseas investment activities not included in the Guidelines are presumably permitted by the government.

Encouraged investments include, among others, infrastructure projects related to the Belt and Road Initiative (the large infrastructure project initiated by China's President Xi Jinping), initiatives to promote exports of China's advanced technology and equipment, cooperation with foreign high-technology and advanced manufacturing enterprises, and establishment of branches by qualified financial institutions. The Chinese government aims to provide more favorable tax, foreign exchange, insurance, customs and information reporting treatment for these investments. It is also expected that these investments will benefit from quicker and simpler regulatory approval or filing procedures.

Consistent with the Chinese government's statements and actions on curbing "irrational" overseas investments since late 2016, the Guidelines restrict investments in real estate, hotels, film studios, and entertainment and sporting organizations, which have been the main target for Chinese investment in recent years. The Guidelines also restrict establishment of overseas equity investment funds or investment platforms that are not linked to any specific project, where the Chinese government may find it difficult to track the ultimate destination of the capital outflow. While the Guidelines reiterate that the Chinese government will primarily continue to use a filing-based system, rather than a pre-approval system, to supervise overseas investments, the aforementioned restricted investments will be subject to prior government approvals, which are generally difficult to obtain.

The Guidelines prohibit any export of China's core military technology, as well as overseas investments in the gambling and pornography industries.

Please refer to the Appendix attached to this client update for a complete list of the three categories of overseas investments under the Guidelines.

We continue to monitor developments in this area. If you have any questions about the Guidelines or Chinese investment regulations generally, please let us know.

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Please do not hesitate to contact us with any questions.

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# APPENDIX

## THREE CATEGORIES OF OVERSEAS INVESTMENTS

### I Restricted Overseas Investments

The Guidelines restrict overseas investments that are perceived to be counter to China's development, cooperation and macro-control policies, including:

- investments in countries with no diplomatic relations with China and in unstable regions, as well as investments which are restricted under bilateral and multilateral treaties concluded by China;
- investments in real estate, hotels, film studios and entertainment and sporting organizations;
- establishment of equity investment funds or investment vehicles without actual or specific industrial projects;
- investments using outdated equipment that does not meet the technical requirements of the target country; and
- investments that do not meet the environmental, energy consumption and safety standards of the target countries.

The first three types of investments are subject to prior approvals by Chinese government authorities.

### II. Encouraged Overseas Investments

Eligible domestic companies are encouraged to engage in:

- infrastructure investments that will further the Belt and Road Initiative and related infrastructure and connectivity;
- investments that promote the export of Chinese quality production capacity, high-quality equipment and technical standards;
- investments that strengthen cooperation with foreign high-technology and advanced manufacturing enterprises, including the establishment of research and development centers overseas;
- prudent participation in the exploration and development of overseas oil and gas, minerals and other energy resources;
- agriculture cooperation with other countries; and

- investments in business and trade, culture, logistics and other services, and establishment of branches by qualified financial institutions.

The Chinese government will work on providing more favorable tax, foreign exchange, insurance and customs treatment for these investments.

### **III Prohibited Overseas Investments**

The Guidelines prohibit overseas investments that jeopardize or may jeopardize China's national interests and security, including:

- export of unauthorized core military technology and products;
- export of technology, crafts and products that China prohibits from being exported;
- investments in the gambling and pornography industries;
- investments prohibited by international treaties to which China is a party; and
- other investments that jeopardize or may jeopardize China's national interests and security.