Client Update

China's New NDRC Regulations Extend Overseas Investment Regime to Insurance Companies

Beginning March 1, 2018, the existing outbound investment regulations (the "Existing Measures") of the National Development and Reform Commission of China (the "NDRC") will be replaced by the Administrative Measures for Outbound Investment by Enterprises (the "New Measures"), which were released by the NDRC on December 26, 2017.

The New Measures will apply to Chinese financial enterprises, including insurance companies, which have historically been exempted from NDRC approval or filing requirements for their outbound investment activities. Under the current regime, Chinese insurance companies' outbound investment operations are regulated by the China Insurance Regulatory Commission (the "CIRC"), the insurance industry regulator. However, under the New Measures a Chinese insurance company will also need to seek NDRC approval or filing when making an outbound investment.

It is uncertain how this new requirement will fit into the existing CIRC regulatory regime governing outbound investment of Chinese insurance companies, for instance, whether the NDRC approval or filing should be sought before applying to the CIRC. We expect that the NDRC, the top economic planner in China, will focus on macroeconomic implications of an outbound investment.

Other major changes and requirements under the New Measures include:

- *Approval and filing requirement*. The New Measures retain the existing NDRC approval requirement for outbound investments in sensitive countries, regions or industries. Sensitive countries and regions include those with no diplomatic relations with China, where war or civil unrest has broken out or in which investment by Chinese enterprises is restricted pursuant to China's international treaties. According to the List of Sensitive Industries of Outbound Investment (2018), which was released on January 31, 2018 and may be adjusted by the NDRC from time to time, sensitive industries include weapons, water resources, news media, real estate, hotels, film studios, entertainment, sporting clubs and the establishment of equity investment funds or investment vehicles without actual or specific industrial projects. The New Measures remove the current requirement that the NDRC must seek additional approval of the State Council for any outbound investment of US$2 billion or more.

Outbound investments that do not require NDRC approval must nonetheless be filed with the NDRC. The filing process will presumably be less onerous than approval, but the authorities maintain the discretion not to accept a filing, so it sometimes can be converted into a *de facto* approval requirement.

- *Expanded scope of covered transactions*. Under the New Measures, investments through non-Chinese entities controlled by Chinese entities will be subject to the NDRC's scrutiny. The term "control" is broadly defined as direct or indirect ownership of 50% or more of the voting rights of the subject entity or the ability to direct its operation, finance, human resources, technology and other significant matters.
- *Elimination of "Road-Pass" regime*. The New Measures abolish the "Road-Pass" regime under which Chinese investors have been required. for any overseas acquisitions or bidding projects with a total investment amount of US$300 million or more, to submit a project information report to the NDRC and obtain a confirmation letter from the NDRC prior to beginning substantial work (entering into a binding agreement, submitting a binding offer or applying to the regulators in the host jurisdiction).
- *NDRC approval or filing as implementation condition*. The New Measures remove the requirement under the Existing Measures that the NDRC approval or filing process be completed before entering into any legally binding document, or the completion of such process be explicitly specified as a condition precedent to the effectiveness of the document. Instead, the New Measures require that the NDRC process be completed prior to implementation of the project. A project is "implemented" when the Chinese investor or the non-Chinese entity controlled by such investor invests assets or interests or provides financing or guarantee for the project. This brings the Chinese legal regime closer to international market practice, allowing the completion of the NDRC approval or filing process to be provided for as a closing condition.

The New Measures mark a significant step in the Chinese government's continued efforts to build a comprehensive regulatory framework and strengthen supervision of outbound investments. On January 18, 2018, the CIRC and six other government agencies also jointly issued a new regulation mainly aimed at strengthening information sharing and coordination among China's outbound investment authorities. It remains to be seen how these new rules will impact the outbound investment activities of Chinese insurance companies and other enterprises.

We continue to monitor developments in this area. If you have any questions about the New Measures 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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