

## CHINA ALERT

### CHINESE GOVERNMENT ISSUED NEW INDUSTRIAL POLICIES REGARDING FOREIGN INVESTMENT



On October 31, 2007, the Chinese government (The National Development and Reform Commission (NDRC) and The Ministry of Commerce (MOFCOM)) updated the Catalogue Guiding Foreign Investment in Industries (the Foreign Investment Catalogue or the Catalogue). The new Catalogue will take effect on December 1, 2007.

The Chinese government issued the first Foreign Investment Catalogue in 1995. As not every business in China is open to foreign investors, one of the key legislations for any foreign investor in doing business in China is the Catalogue. The Catalogue lists the business sectors where the Chinese government forbids, restricts (which means it is not forbidden but it is particularly regulated by the Chinese government) or encourages foreign investment. Anything outside of the Catalogue is deemed as a sector that the Chinese government allows for foreign investment. With the development of the Chinese economy and the adjustment of the government industrial policy, the initial Catalogue was amended respectively in 1997, 2002 and 2004.

Compared with the year 2004 version of the Catalogue, the new Catalogue increases the number of “encouraged” business sectors from 256 to 351. Among the newly added “encouraged” sectors are high-tech manufacturing, equipment manufacturing and new materials manufacturing (e.g., the development, manufacture and process of forest food, and clothing production through computer integrated manufacturing systems) and certain service industries such as modern logistics.

Purely export-oriented industries are no longer listed as “encouraged” and this reflects the Chinese government’s adjustment of its policy on trade facing the tremendous trade surplus and rapid growth of the foreign exchange reserve in China. Also different from the 2004 Catalogue, the new Catalogue does not specify which business sectors may receive more preferential treatment in the Mid or Western Region of China, and it is expected that the government will wrap up all the preferential policies to foreign investment in the Mid or Western Region of China when amending the Catalogue of Priority Industries for Foreign Investment in the Mid or Western Region.

The number of “restricted” sectors is increased from 77 to 86. The increase mainly attributes to the excavation of certain minerals (such as phosphorous), melting of certain nonferrous metals

(such as tungsten and molybdenum), manufacturing of certain chemical raw materials and chemical products (such as tetrafluoroethylene) and manufacturing of certain equipment (such as a 30-ton or less Hydraulic Excavator).

In the new Catalogue there are 39 sectors falling into the “forbidden” areas for foreign investment, compared to 34 sectors in the 2004 Catalogue. For example, the development and application of technologies related to the diagnosis and treatment of human stem cell and human genes now is forbidden for foreign investment. The change of the coverage of the “restricted” and “forbidden” sectors reflects the government’s policy on resource efficiency and conservation, environmental protection and security of national economy.

Specifically speaking, some eye-catching changes in the new Catalogue include:

#### **1. FINANCIAL SERVICES**

- Foreign investment in futures companies is no longer “forbidden” and it now becomes a “restricted” area; this means that a foreign investor may invest in a futures company in mainland China, but the foreign shareholding of the concerned futures company shall not be more than 50 percent.
- Securities companies remain in the restricted category, but their business is explicitly limited to underwriting A shares, B Shares, and H Shares, and underwriting and trading bonds issued by the government and companies; furthermore, the maximum foreign shareholding in securities companies remains to be 1/3.

#### **2. EXCAVATION OF MINERAL RESOURCES**

- Excavation of certain important minerals, such as wolfram, tin, antimony, molybdenum and fluorite, now is forbidden for foreign investment and was moved out of the “restricted” category.
- Excavation of phosphorus was moved from the “encouraged” category and now becomes a “restricted” area for foreign investment.
- Excavation of certain minerals, such as the excavation of copper, lead or zinc, was moved out of the “encouraged” category and now becomes simply a “permitted” area for foreign investment.

#### **3. REAL ESTATE BUSINESS**

- Construction and operation of golf courses is forbidden now and was moved out of the “restricted” category.
- Housing agents or brokerages of second-tier real estate properties are added into the “restricted” category from the “permitted” category.
- Development and construction of ordinary residences is no longer an “encouraged” area and now becomes simply a “permitted” category for foreign investment.

#### **4. POWER GRID**

- Construction and operation of a power grid is no longer an area forbidden for foreign investment; now it is under the “restricted” category, but the foreign investor’s total shareholding in the invested company shall not be majority.

## 5. ONLINE CULTURE OPERATION

- News Websites, services of Internet audio-visual programs, business sites that provide Internet access services and Internet culture operations are no longer the areas permitted for foreign investment, and now fall into the “forbidden” category.

The amendments to the Catalogue are consistent with recent changes in other Chinese laws and regulations. One such regulation is the *Catalogue Guiding Adjustment to Industrial Structure*, which provided that projects consuming an excessive amount of energy or causing severe environmental pollution should be eliminated. Another example is the real estate market, where several Chinese governmental authorities enacted, either jointly or separately, a number of regulations in the past year to try to cool down the real estate market. Regarding the Internet, the Chinese government also issued a regulation in 2005 to forbid foreign investment in news Websites, services of Internet audio-visual programs, etc.

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