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# Chinese Outward Investment: An emerging policy framework

*Editors: Nathalie Bernasconi-Osterwalder, Lise Johnson, and Jianping Zhang*

**A COMPILATION OF PRIMARY SOURCES**



# CHINA SHIPPING LINE

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## Editors' Preface

China's "Going Global" strategy, formally adopted by the Chinese central government in 2001, marked the beginning of China's remarkable increase in outward investment. From 2004 to 2011, China's outward direct investment grew from US\$5.5 billion to over US\$65 billion per year, and is predicted to reach US\$150 billion by 2015.

The rapid rise and increasingly significant size of Chinese outward investment is attracting attention and provoking debate not only from a purely economic but also a sustainable development perspective. The investment presents promise for sustainable development in recipient countries as well as China; but it also raises policy challenges for myriad social, environmental, and governance issues as effective policy and legal frameworks relating to these areas are essential for maximizing the benefits and minimizing the costs that can be associated with such investment. While the legal and policy frameworks in the recipient country are key to achieving development that is sustainable from the inflowing capital, the role of international frameworks—as well as China's domestic legal and policy framework governing its outward investment—is also significant.

China, arguably more than any other country, has put a framework in place which sets out priorities and controls relating to foreign outward investment. The various instruments are issued by different agencies, targeting Chinese outward public and private investors. They determine which sectors, such as, for example, the extractives sector, are to be promoted and under which circumstances investors can benefit from financing and other support. China also has set up a system that tracks the activities and investments abroad through a permit and reporting system.

However, despite their importance, official documents and materials relating to Chinese outward investment are generally difficult to find and, if available, scattered among various sources. We have therefore compiled an English-language booklet of over 80 primary texts relevant to Chinese policy on Chinese outward investment to facilitate access to them, ranging from broad five-year plans setting forth the government's comprehensive policy aims, to more specific circulars and notices issued by government entities to implement those goals. The documents include, among others, official policy declarations by China's State Council, rules and regulations issued by National Development and Reform Commission, the Ministry of Commerce and Ministry of Foreign Affairs, and guidelines issued by state entities such as the China Export Import Bank. To provide greater context, Annex 1 describes the roles of the key Chinese entities regulating and influencing Chinese outward investment. Annex II then provides a chart to help readers understand the basic organizational structure of the relevant entities.

The vast bulk of the measures included in the compilation are those that were issued from January 2000 to January 2012, covering China's launch and subsequent pursuit of its outward investment or "Going Global" strategy. The only measures predating the year 2000 are two broad statements of policy, "China's Eight Principles for Economic Aid and Technical Assistance to Other Countries," announced by Chinese Premier Zhou Enlai in 1964, and "China's Four Principles of Economic and Technological Cooperation," announced by Chinese Premier Zhao Ziyang in 1983. These two measures are included to help place Chinese outward investment in context, as they reflect the fact that for decades prior to the post-2000 surge, the Chinese government has been encouraging overseas investments.

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<sup>1</sup> The Going Global strategy was first mentioned at the 15th National Congress of the Communist Party of China, which took place in September 1997.

By combining these primary materials into one comprehensive and accessible English-language source<sup>2</sup>, IISD and IIER are filling a gap in the available literature. Making these primary sources easy to access and understand will facilitate a broader and deeper understanding of Chinese outward investment and the policies supporting it, and, importantly, will facilitate more and improved discourse on and analysis of the relationship between Chinese outward investment and sustainable development.

The measures are organized by type (i.e., broad policy statements or implementing measures) and by subject matter—i.e., measures relating to outward investment in extractive industries or overseas manufacturing, policies on corporate social responsibility, and policies regarding investment in Africa. The organization of the compilation reflects priorities set by Chinese policies to date, which have, for instance, emphasized the promotion of outward investment in extractive industries. They also reflect themes and issues that are particularly relevant for sustainable development, such as the measures that have been designed to address corporate social responsibility. One key issue for sustainable development that is not used as a specific organizing theme in this compilation is the issue of measures relating to climate change and clean technology. Nevertheless, readers of the compilation can find a number of measures implicitly or explicitly related to the subject.

We hope this book will be useful and will enhance study of how Chinese outward investment and the policies on which it is based impact sustainable development. We believe that China's legal and policy framework, if further developed, can serve as a foundation for ensuring that China's investment abroad is sustainable. And, if China's strategies for improving corporate, environmental, and social performance in the home and host country are further enhanced, built upon, and effectively implemented, the framework could serve as a model of how other countries, too, could better control the quality of their investments abroad from a sustainable development perspective.

**The editors:**

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<sup>2</sup> Readers should be aware that the documents included in this compilation have been gathered from a variety of sources. Some of the texts are unofficial translations of the documents by IISD. Many of the texts are unofficial translations taken from websites of the Chinese government, including the website of the Chinese Ministry of Commerce (MOFCOM). Other common sources used were unofficial translations available from the website of the Asian Legal Information Institute (AsianLII) and LawInfoChina (lawinfochina.com). The texts reproduced in this compilation are not all exact duplicates of the texts found on these government and other websites. In some cases, the editors have modified the texts in order to correct spelling or grammatical errors, or to try to improve readability. Where practical, these modifications were indicated by being placed in brackets. The source of each document is noted under each title. Readers can therefore compare the texts in this compilation with the source texts if there are questions about the edits that have been made.



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## *List of Abbreviations*

|           |  |
|-----------|--|
| CBRC      | China Banking Regulatory Commission                          |
| ExIm Bank | China Export and Import Bank                                 |
| MFA       | Ministry of Foreign Affairs                                  |
| MOFTEC    | Ministry of Foreign Trade and Economic Cooperation           |
| MOF       | Ministry of Finance  |
| MOFCOM    | Ministry of Commerce   |
| NDRC      | National Development and Reform Commission                   |
| NPC       | National People's Congress                                   |
| PBOC      | People's Bank of China                                       |
| RMB       | Renminbi   |
| SAFE      | State Administration of Foreign Exchange                     |
| SASAC     | State-Owned Assets Supervision and Administration Commission |
| SSE       | Shanghai Stock Exchange                                      |

## ***Section One: Broad Policies and Documents Regarding Outward Aid and Investment***

### ***1. China's Eight Principles for Economic Aid and Technical Assistance to Other Countries (Chinese Premier Zhou Enlai, January 1964)***

Source: China's Information Office of the State Council, White Paper on China's Foreign Aid, Appendix I. Retrieved from [http://english.gov.cn/official/2011-04/21/content\\_1849913\\_10.htm](http://english.gov.cn/official/2011-04/21/content_1849913_10.htm)

1. The Chinese government always bases itself on the principle of equality and mutual benefit in providing aid to other countries. It never regards such aid as a kind of unilateral alms but as something mutual.
2. In providing aid to other countries, the Chinese government strictly respects the sovereignty of recipient countries, and never attaches any conditions or asks for any privileges.
3. China provides economic aid in the form of interest-free or low-interest loans, and extends the time limit for the repayment when necessary so as to lighten the burden on recipient countries as far as possible.
4. In providing aid to other countries, the purpose of the Chinese government is not to make recipient countries dependent on China but to help them embark step by step on the road of self-reliance and independent economic development.
5. The Chinese government does its best to help recipient countries complete projects which require less investment but yield quicker results, so that the latter may increase their income and accumulate capital.
6. The Chinese government provides the best-quality equipment and materials manufactured by China at international market prices. If the equipment and materials provided by the Chinese government are not up to the agreed specifications and quality, the Chinese government undertakes to replace them or refund the payment.
7. In giving any particular technical assistance, the Chinese government will see to it that the personnel of the recipient country fully master the technology.
8. The experts dispatched by China to help in construction in recipient countries will have the same standard of living as the experts of the recipient country. The Chinese experts are not allowed to make any special demands or enjoy any special amenities.

### ***2. China's Four Principles of Economic and Technological Cooperation (Chinese Premier Zhao Ziyang, January 1983)***

Source: Deborah Brautigam, *The Dragon's Gift: The real story of China in Africa* (2009)

1. In carrying out economic and technological cooperation with African countries, China abides by the principles of unity and friendship, equality and mutual benefit, respects their sovereignty, does not interfere in their internal affairs, attaches no political conditions and asks for no privileges whatsoever.
2. In China's economic and technological cooperation with African countries, full play will be given to the strong points and potentials of both sides on the basis of their actual needs and possibilities, and efforts will be made to achieve good economic results with less investment, shorter construction cycles and quicker returns.

3. China's economic and technological cooperation with African countries takes a variety of forms suited to the specific conditions, such as offering technical services, training technical and management personnel, engaging in scientific and technological exchanges, undertaking construction projects, entering into cooperative production and joint ventures. With regard to the cooperative projects it undertakes, the Chinese side will see to it that the signed contracts are observed, the quality of work guaranteed and stress laid on friendship. The experts and technical personnel dispatched by the Chinese side do not ask for special treatment.
4. The purpose of China's economic and technological cooperation with African countries is to contribute to the enhancement of the self-reliant capabilities of both sides and promote the growth of the respective national economies by complementing and helping each other.

### 3. Section on "Going Global" from the Tenth Five-Year Plan (2001–2005) (National People's Congress, 2001)

Retrieved from <http://www.people.com.cn/GB/shizheng/16/20010318/419582.html> (in Mandarin Chinese)  
Translation by IISD

#### Chapter 17, Section IV: Implement the ["Going Global"] strategy

Encourage outward investments that reflect China's competitive advantages, and expand the areas, channels and methods of international economic and technological cooperation. Continue to develop foreign project contracting and labour cooperation, encourage enterprises with competitive advantages to develop overseas processing trade, promote the export of products, services and technologies. Support overseas exploitation of resources for which there is a shortage in China through cooperation, promote the adjustment of domestic industrial structure and exchange of resources. Encourage enterprises to utilize human intellectual resources abroad, as well as to set up research and development institutes and design centres overseas. Support capable enterprises to operate overseas and grow globally. Improve the service system for outward investments, create conditions for the implementation of the ["Going Global"] strategy in areas such as finance, insurance, foreign exchange, taxation, human resources, law, information service, and exit-entry administration. Improve the corporate governance structure and internal restraint system of enterprises engaging in outward investment, and standardize its supervision.

### 4. State Council Decision on Reforming Investment System (State Council, July 2004)

Source: National Development and Reform Commission website. Retrieved from [http://en.ndrc.gov.cn/policyrelease/t20060207\\_58851.htm](http://en.ndrc.gov.cn/policyrelease/t20060207_58851.htm)<sup>3</sup> (also available in Mandarin Chinese at <http://www.china.com.cn/chinese/2004/Jul/618794.htm>)

#### Decision of the State Council on Reform of the Investment System

Guofa Paper No. 20 in 2004, issued by the State Council

The People's Governments of Provinces, Autonomous Regions and Municipalities, Ministries and Commissions of the State Council and institutions directly under the State Council[:]

Since reform and opening up, the state has been making a series of reforms to break up the investment management mode under the traditional planned economic system, and a new pattern with diversified investment modes, multiplicity of capital sources and market-oriented system is taking shape. But the existing investment system also has some problems: especially, enterprises do not have complete decision-making rights over investment,

<sup>3</sup> As explained in Footnote 2, the text reproduced below is not identical to the text in English available from this source. IISD has made certain edits based on a comparison of the text in English with the text in Mandarin Chinese.

and the basic role of the market in allocation of resources is not fully developed. The scientific and democratic level of the government's decision-making over investment shall be further upgraded, and the effectiveness of macro-control measures and supervision shall be enhanced. Therefore, the State Council has decided to further deepen investment system reform.

### **I. Guiding ideologies and targets in deepening reform of the investment system**

(1) **The guiding ideologies on deepening investment system reform** include fully bringing the basic role of the market in resource allocation into play under the government's macro-control, positioning . . . enterprises [to play main roles] in investment activities, setting . . . standards for [government] investment activities, . . . protecting the legitimate rights and interests of investors, . . . creating a market environment suitable for fair and orderly competition between all types of investors, promoting the reasonable flow and effective allocation of production elements, optimizing the investment structure, upgrading investment efficiency and boosting the coordinated economic development and all-round social progress in accordance with requirements to improve the socialist market economic system.

(2) **Targets for deepening investment system reform** include reforming the system of government oversight of enterprise investment and allowing enterprises greater independence in making investment decisions in line with the principle that "the investor makes the investment decisions, reaps the profits and bears the risks;" rationally defining the government's investment functions, improving the [scientific and democratic level] of government investment [decisions] and establishing an accountability mechanism for government investment [decisions]; further expanding project financing channels and developing multiple . . . financing modes; cultivating standard investment intermediaries and strengthening self-discipline [of the profession] and promoting fair competition; [improving] a macro-control mechanism for investment [and improving] control methods and measures; accelerating the legislation process in investment; intensifying investment supervision and maintaining a standard order in investment and construction markets.

[Efforts to deepen reform and expand opening-up are intended to] result in a new investment system under which investment is guided by the market, enterprises make their own investment decisions, banks examine creditworthiness independently, various forms of financing coexist, intermediary services are standardized and macro-control is efficient.

### **II. [Change the management functions of the government and establish the position of main bodies of enterprises]**

(1) **Reform of the project approval system and allow enterprises greater independence in making investment decisions.** [The current enterprise investment management method, which is all projects must be decided and approved by governments of different levels and related departments according to investment scale disregarding investor type, capital source and project nature, shall be completely reformed. Enterprise projects not funded by government investment no longer need to be decided and approved by the government]. Instead, the systems of "Authorization" and "Record-filing" will be used where appropriate. Projects not using state funds will only need governmental authorization for important and restricted investment projects relating to public or social interest. Other projects without state funds, no matter how large the scale, only need to be [filed for] record, and enterprises will make [their own] decisions on [the project's] market prospects, economic benefits, source of capital and product [technical] planning, and take on risks themselves. [Enterprises] shall also apply for [licenses] of environment protection, land use, resource use, production safety and urban planning by themselves and transact such formalities as tax deduction and exemption. Only a capital application report is required for government [decision and] approval for [enterprise investment] projects constructed with government subsidy, lending or discounted loans. All regions and departments shall improve regulations and standard management and cannot withhold the investment decision rights delegated to enterprises under any pretext.

**(2) Standardize government [examination and approval] system.** The scope of [government examination and approval system] shall be strictly defined[,] and adjusted according to the changed situation. “Catalogue of Investment Projects [Examined and Approved] by the Government” [(“the Catalogue” below)] shall be jointly put forward by the investment department of the State Council and related departments, and implemented after the approval of the State Council. Without the approval of the State Council, other regions and departments shall not add to or delete the scope regulated by the Catalogue.

A project that is invested [in by an] enterprise and subject to the [examination and approval] system needs only [to submit] the project application report. The project proposal, feasibility study report, and project opening report are no longer required. Under the [examination and approval] system, the government will only examine the project application report from the perspective of maintaining the [security] of the economy, reasonable development and exploitation of resources, protection of the environment, optimization of the layout of key projects, guaranteeing the public interests and prevention of monopoly, etc. [For projects with outward investments, t]he government shall also [examine and approve] from the perspectives of market [access] and capital [account] management. [Relevant] government department[s] shall formulate strict and standard authorization systems, specify the scope, contents, application procedure and stipulated time period for transactions and make them public to raise efficiency and transparency.

**(3) Improve the filing system.** For projects which do not fall in the investment authorization catalogue or have no government investment, [they should be filed for record. An enterprise should file such a project with competent departments of the local government, unless the state stipulates otherwise]. The specific implementation method of the filing system is formulated separately by the provincial government[s]. The investment department [of the] State Council shall [provide] guidance and supervision [for] the filing [for record to prevent the filing function from improperly replacing the approval function].

**(4) Large enterprise groups will be given greater power to make investment decisions.** For large enterprise groups which invest to build projects in the “Catalogue of Investment Projects Authorized by the Government,” independent declaration for authorization can be given according to projects and a medium- and long-range development and construction plan can be formulated. After the approval of the State Council and the investment department under the State Council, projects in the “Catalogue of Investment Projects Authorized by the Government” require no other authorization, and only filing formalities are needed. Enterprise groups shall [expediently] report the situation on the implementation and construction of the project to related departments of the State Council.

**(5) Encourage social investment.** The field for investment of non-government capital has widened. Non-government capital is encouraged to enter unrestricted infrastructure, public welfare, and other fields. The price of public products shall be rationalized gradually. Through such measures as principal injection, interest-discounted loans and favourable taxes, non-governmental capital shall be encouraged and guided into public welfare undertakings and infrastructure projects. This refers to solely funded undertakings, joint ventures, cooperatives, joint management projects and financing modes. Contractors can be selected through public bidding for projects involving the exploitation and utilization of state monopoly resources that require unified planning. Bidding will occur after the government has confirmed construction planning. Eligible enterprises of all ownerships are encouraged to invest abroad.

**(6) Further expand the financing channels [for] the investment projects.** Enterprises of all categories are allowed to raise investment funds through equity [financing] and a multi-tiered capital market with . . . multiple fund-raising mode[s] complementing each other shall be built up gradually. Upon the approval of the investment department in the State Council and securities regulatory institutions, some infrastructure projects with stable earnings shall be selected as pilot projects, and the construction fund for these projects shall be raised through public issuance

of stock[s] and convertible bonds. Under the premise of strictly preventing risk, the enterprise bond issuance regulatory system shall be reformed, the bond issuance scale shall be enlarged and the categories of enterprises' bonds shall be increased. Fixed asset loan [examination and] approval and corresponding risk management system shall be improved and perfected according to market rules, and project construction shall be supported through such business methods as syndicated loans, lease financing and financial consulting. Enterprises of all ownership[s] are allowed to apply for overseas loans according to related regulations. It's important to formulate related laws and regulations, build [financing and credit guarantee systems for small- and medium-sized enterprises], encourage banks and [all categories of] eligible guarantee institutions to study and innovate on the guarantee mode[s of project financing, take multiple measures to increase the capital strength of guarantee institutions], boost the founding of [small- and medium-sized investment] companies, and establish and improve [venture capital] mechanisms. The development of investment funds of all categories shall be standardized. [I]nsurance funds' indirect investment in infrastructure and key construction projects shall be encouraged and promoted.

**(7) [Regulate enterprise investment practices].** Enterprises of all categories shall strictly conform to laws and regulations on land resources, environmental protection, [production safety], [urban planning, etc., shall strictly implement industrial policies and industry entry standards, and shall not invest in projects prohibited by the state]. Enterprises shall be honest and law-abiding, active in maintaining public interest and ensuring project quality to upgrade returns on investment. [Enterprises owned by the state or controlled by the state through stock holding] shall establish and improve state-owned asset contributor system, investment risk control mechanism, scientific and democratic decision system and key investment responsibility accountability system, [according to requirements of the state-owned asset management system reform and modern enterprise systems]. Efforts should be made to establish the corporate responsibility system for projects, [capital fund] systems, competitive bidding systems, project quality monitoring systems, environmental monitoring and contract management systems.

### **III. Perfect [the government investment system and standardize government investment practices]**

**(1) Rationally [define] the scope of government investment.** Government investment will mainly be used in economic and social fields related to national security and in which the market cannot make effective allocation of resources, including public welfare and public infrastructure, environmental protection and improvement, advancement of economic and social development of less-developed regions, and technological development and high-tech industrialization. Priority will be given to social capital for projects that can be [constructed with social capital. The authority over investment shall be rationally divided between the central and local governments]. Besides state-class governance, the central government investment is mainly responsible for arranging trans-regional [projects], trans-drainage area projects and projects having [significant] influence on the general situation of economic and social development.

**(2) Improve the decision mechanism of government-invested projects.** Improve the decision-making rules and procedures for government-funded projects, make investment decisions more scientific[ally] and democratic[ally]. Government-funded projects [in general] must pass the assessment of eligible consulting intermediaries. Competition mechanisms shall be introduced for assessment[, ] and rational competition rules shall be formulated. For especially important projects, systems shall be established for soliciting opinions from experts. [A public disclosure system shall be gradually established for government funded projects, and opinions and suggestions from a wide range of perspectives shall be listened to].

**(3) Standardize the management of [government investment funds].** Medium- and [long-term plans and annual plans] shall be formulated for government investment to make comprehensive [and coordinated] arrangement for the rational use of various [government investment funds], including investment in the budget, funds [of all

categories] for special construction and overseas loan[s]. The government investment funds are] used by projects in such matters as direct investment, [capital] injection, investment subsidy, loan transfer and low-interest loan according to capital source, project nature[,] and demand on [regulation and] control. For [investment made through capital] injection, the contributor representative shall be confirmed. Corresponding management methods shall be devised according to different fund type[s] and fund use modes, and the [rationalization,] systematization and standardization of the decision-making procedures and [government investment fund management] shall be realized gradually.

**(4) Simplify and standardize the approval procedure of government-invested projects[,] and rationally divide the [decision and] approval [authority].** The project approval [authority] of the central and local governments, investment department of the State Council and related department[s] shall be [defined] rationally according to project nature, fund source and [function] division. As to government-invested projects with direct investment and capital fund injection, only the project proposal and feasibility study report are subject to [decision and approval] from the perspective of investment decision[;] and [a] project opening report is no longer required except [under] special conditions. At the same time, the preliminary design and budgetary estimate [decision and] approval shall be stricter. As to projects involving investment subsidy, loan transfer and low-interest loans, only the fund application report is subject to [decision and approval]. The specific power division and [decision and] approval procedure shall be jointly formulated by the investment department of the State Council and related departments and such power division and approval procedure can be promulgated for implementation after getting the approval of the State Council.

**(5) Strengthen management [of] government-invested projects and improve the construction implementation mode.** The construction standards of government-invested projects shall be standardized and modified [in a] timely [manner] according to the change in situation. The investment [fund] plan shall be issued according to project progress. The [regulation of intermediary services for government investment projects shall be strengthened,] and qualification management shall be adopted for such intermediaries as consulting and assessment institutions and bidding agents to upgrade the service quality. The contractor system should be put in place as soon as possible for non-profit government investment projects, i.e., through such measures as bidding, [to] select professional project management units to take charge of the construction, strictly control project investment, quality and time limit[s] and hand over the completed project to the users. The investment risk awareness shall be intensified, and the risk management mechanisms for government-invested projects shall be established and improved.

**(6) Introduce market mechanisms and fully develop the efficiency of government investment:** Governments at all levels shall create conditions and use modes such as franchised operations and subsidized investments . . . to attract non-governmental capital in public welfare undertakings and infrastructure projects with rational rewards and promising investment returns. Franchised operations will be tried with monopoly projects. Fair competition shall be emphasized to protect the public interest through a contractor bidding system. The proprietary or operational rights of established government investment projects could be transferred [given that certain conditions are met]. By law, this requires government approval and the returned capital can be reinvested in public welfare and other infrastructure projects.

#### **IV. Strengthen and improve macro control of investment**

**(1) Perfect the macro-control system on investment.** The National Development and Reform Commission will join hands with related departments under the leadership of the State Council[, according to the function division, close cooperation, effective coordination, efficient operation and legal supervision,] to regulate investment activities across all sectors of society. This is to maintain a reasonable investment scale, optimize investment structures, raise investment efficiency, promote the quick, sustained, coordinated, and healthy development of the national economy [and promote comprehensive social progress].



**(2) Improve the macro-control [modes] of investment.** Investment in the whole society should be brought under indirect regulation and control through the comprehensive use of economic, legal and administrative means and economic levers. Related departments of the State Council shall formulate development and construction plan[s] in such fields as education, science and technology, health, [transportation,] communication, energy, agriculture, forestry, water conservancy, ecological construction, environmental protection and strategic resources development (including necessary special development and construction plan[s]) and specify the guiding ideology, strategic objective[s], overall distribution and main construction items according to the medium- and long-range plan[ ] for the national economy and social development. The development and construction plan[s] approved according to stipulated procedures [are] an important basis for decision on investment. Governments at all levels and related departments shall try to raise the efficiency of government investment and guide social investment, formulate and adjust [in a timely manner] the Fixed-Asset Investment Guidance Catalogue and the Foreign-Invested Industry Guidance Catalogue and specify investment projects encouraged, restricted and prohibited by the state. It's important to establish an information dissemination system, [expediently] promulgate the [government's] targets for investment [regulation and] control, main [regulation and] control policies, investment situation [in] key fields and development trend of the government to guide investment activities of the whole society. A scientific market access system shall be established. [E]nvironmental protection standards, safety standards, energy-consumption and water-consumption standard[s], product technology, [and] quality standards for key fields shall be standardized to prevent low-level wasteful duplication.

**(3) Coordinate the macro-control means.** The scale of government investment shall be reasonably confirmed according to the requirements of the national economy and social development [and the needs of macro-control;] and it's important to keep the state's positive guidance and effective control of the investment in the whole society. Economic levers such as investment subsidies, low-interest [loans], prices, [supportive] interest rates and taxation shall be adopted to guide social investment and optimize the industrial and regional structure of the investment. Policies on loan and credit shall be formulated and adjusted at due time[s] to guide the [total amount] and direction of medium- and long-[term] loans. The land use system shall be strengthened and standardized, and the role of control and guidance of land provision on social investment shall be given full play.

**(4) Strengthen and improve investment information and statistical work.** Improve investment statistical work and reform and improve the investment statistical system [and accurately, comprehensively and in a timely way] reflect the stock of fixed assets in the whole society and the operation trend of investment[;] establish information sharing mechanism[s of all kinds] and offer scientific [bases] for the macro-control of investment. An investment risk alert and prevention system shall be established and the monitoring and analysis of the macro economy and investment operation shall be strengthened.

## **V. Strengthen and improve the supervision [and management of] investment**

**(1) Establish and improve the government investment supervision system.** [Government investment accountability systems shall be established. In such departments and units as project consulting, investment decision, design, construction and management shall be bound by their respective responsibilities. Those who cause significant losses to the state due to their non-compliance with the laws and regulations shall be held accountable administratively and legally according to law. The] government investment balance mechanism shall be improved; investment departments in charge, financial departments in charge and other departments shall supervise the management of government investment according to their functions and division of work. Auditing organs shall fully execute their functions according to law to further strengthen the auditing and supervision of government-invested projects and upgrade the management level of . . . and returns on government investment. The system of key project auditing shall be perfected and the system of post-[completion] assessment of

government-invested projects shall be established to fully supervise government-invested projects. A social supervision mechanism for government-invested projects shall be established and the public and press shall be encouraged to scrutinize government-invested projects.

**(2) Establish and improve coordinated and cooperative corporate investment supervision system.** Such departments as land and resources, environmental protection, urban planning, quality supervision, bank regulation, securities regulation, foreign exchange management, industry and commerce administration, [and production safety] supervision shall [strengthen] the supervision of the corporate investment activities, and [reject the applications to complete relevant formalities from] those [that] do not meet the stipulation[s] of laws, regulations and policies. For those projects [that] don't meet the prescription of related laws and regulations in the construction processes, related department[s] shall order them to [expediently] rectify [the violation] according to law. Investment departments in charge in governments at all levels shall enhance the in-progress and post[-project] supervision and examination of corporate investment projects. Projects [that] do not meet the industrial policies or market access standards or projects whose construction started without getting [relevant] authorization[, ] approval [or licensing] shall be ordered to stop and the related [enterprises and persons shall be prosecuted according to law]. The auditing organs [shall] audit and supervise the investment [by] state-owned enterprises to bolster the value of state-owned assets. An enterprise investment credit system shall be established. Those who offer false information or violate laws and regulations in the process of project [application] and construction shall be punished [and their identities disclosed to the public,] and their investment and construction activities shall be restricted [within a certain period of time].

**(3) Strengthen the supervision of investment intermediaries.** Investment intermediaries shall be de-linked from government departments. The intermediaries shall abide by the principle of honesty, strengthen self-discipline and offer high-quality and diversified services to investors. The intermediaries are encouraged to go through partnership and joint-stock transformation. An association of intermediaries shall be established and perfected and an industrial management system with standard laws, government supervision and industrial self-discipline shall be established. Regional blockades and industrial monopolies shall be broken, and an open, just and fair investment intermediary market shall be established and the legal responsibilities of the intermediaries shall be increased.

**(4) Perfect laws and regulations and supervise and manage [according to] law.** It is necessary to establish and improve laws and regulations related [to] investments; protect the legitimate interests of investors[ according to law]; create a market environment suited to fair and orderly competition [among] investors and realize the basic role of the market in resource allocation. It is also necessary to promote the reasonable flow and effective allocation of production elements, standardize the investment activities for all types of investors and promote the government's investment management activities. Related laws and regulations should also be implemented, financial disciplines must be enforced, management loopholes need to be tightened, construction costs should be slashed and investment efficiency must be improved. Law enforcement investigations shall be improved and a standard construction market order shall be cultivated and maintained.

**Appendix:** *Catalogue of Investment Projects Authorized by the Government* (2004) (State Council, July 2004) [Only an excerpt of the text, Part XIII, "Investment abroad," is reproduced here. The full text is available at the link provided above].

### **XIII. Investment abroad**

Chinese overseas investment projects related to resource exploitation that have an investment of US\$30 million and above are authorized by NDRC.

Non-resource projects overseas involving US\$10 million and above in foreign exchange are authorized by the NDRC.

For other overseas investment projects, the investment projects managed by central enterprises should be reported to the NDRC and MOFCOM for record. Other investment projects are subject to the approval of the investment departments of local governments in accordance with related laws and regulations.

MOFCOM is responsible for authorizing Chinese companies' investment overseas (excluding financial enterprises).

For all the information mentioned, the Chinese edition will be the decisive version.

### **5. Five Measures Announced by the Chinese Government on the UN High-Level Meeting on Financing for Development (September 2005)**

Retrieved from [http://news.xinhuanet.com/english2010/china/2011-04/21/c\\_13839683\\_18.htm](http://news.xinhuanet.com/english2010/china/2011-04/21/c_13839683_18.htm)

1. China has decided to accord zero tariff treatment to some products from all the 39 least-developed countries (LDCs) having diplomatic relations with China, which covers most of the China-bound exports from these countries.
2. China will further expand its aid programs to the heavily-indebted poor countries (HIPCs) and LDCs, and, through bilateral channels, write off or forgive in other ways, within the next two years, all the overdue parts as of the end of 2004 of the interest-free or low-interest governmental loans owed by all the HIPCs having diplomatic relations with China.
3. Within the next three years, China will provide US\$10 billion in concessional loans and preferential export buyer's credit to other developing countries to improve their infrastructure and cooperation between enterprises on both sides.
4. China will, in the next three years, increase its assistance to other developing countries, African countries in particular, by providing them with anti-malaria drugs and other medicines, helping them set up and improve medical facilities and training medical staff. Specific programs will be implemented through such mechanisms as the Forum on China-Africa Cooperation as well as bilateral channels.
5. China will train 30,000 personnel of various professions from other developing countries within the next three years so as to help them speed up their human resources development.

### **6. Section on "Going Global" from the *Eleventh Five-Year Plan* (2006-2010) (National People's Congress, 2006)**

Retrieved from <http://news.sina.com.cn/c/2006-03-16/16158457479s.shtml>  
Translation by IISD

### **Chapter 37, Section 1: Implement the “Going Global” strategy**

Support qualified enterprises to engage in outward direct investment and global operations. Give priority to competitive industries, provide guidance to enterprises to engage in overseas processing trade, promote the diversification of products’ places of origin. Cultivate and develop Chinese multinational corporations through international mergers and acquisitions, equity participation, public listing, restructuring and consolidation, etc. Enhance cooperative development of overseas resources based on the principles of complementary strengths, equality, and mutual benefits. Encourage enterprises to participate in infrastructure construction overseas, improve the level of project contracting overseas, and steadily develop labour cooperation. Improve the outward investment promotion and security system, strengthen the coordination of overseas investments, risk management and the supervision of state-owned assets overseas.

### **7. Nine Principles on Encouraging and Standardizing Outward Investment (State Council, October 2006)**

Source: Unofficial translation from Global Witness website. Retrieved from <http://www.globalwitness.org/sites/default/files/library/Chinese%20guidelines%20EN.pdf>

In order to seize economic globalization and regional cooperation opportunities, and encourage qualified enterprises to actively and steadily participate in international economic and technological cooperation, and to further enhance the level of opening up, the meeting stressed:

1. Insistence on mutual respect, equality, and mutual benefit, complementarity and win-win cooperation.
2. Strengthening of policy guidance, coordinating and standardizing orderly and rational distribution, preventing disorderly competition, and safeguarding national interests.
3. Improving the policy-making mechanism, the implementation of overseas investment enterprises, the autonomy of scientific studies and careful decision making, and prevention of investment and operational risks.
4. Strengthening supervision of state-owned assets overseas, and supervision of sound evaluation and examination systems, establishment of security risk assessment and project cost accounting systems, and preserving and increasing the value of assets.
5. Complying with local laws and regulations, and adhering to fair, transparent public works project contracts, making a commitment to and fulfilling the necessary social responsibility to protect the legitimate rights and interests of local employees, paying attention to environmental resource protection, caring for and supporting the local community and people’s livelihood.
6. Increasing the level of offshore project building contracts, improving product quality and efficiency, and constantly enhancing overall competitiveness.
7. Strengthening safety training, improving safe production responsibility systems, increasing protection of foreign-funded enterprises, institutions and property safety.
8. Accelerating personnel training, paying attention to the cultivation of operating in the international talents, and enhance their transnational operations management capabilities.
9. Creating a friendly environment for public opinion, walking the road of peaceful development policy, and preserving our good image and a good corporate reputation.

### **8. Six Measures for Foreign Aid Pledged by the Chinese Government at the 2008 UN High-Level Meeting on the Millennium Development Goals (September 2008)**

Retrieved from [http://news.xinhuanet.com/english2010/china/2011-04/21/c\\_13839683\\_20.htm](http://news.xinhuanet.com/english2010/china/2011-04/21/c_13839683_20.htm)

1. In the coming five years, China will double the number of agricultural technology demonstration centres it builds for other developing countries to 30, increase the number of agricultural experts and technicians it sends overseas by 1,000 to double the present figure, and provide agricultural training opportunities in China for 3,000 people from other developing countries.
2. China will contribute US\$30 million to the UN Food and Agriculture Organization to establish a trust fund for projects and activities designed to help other developing countries enhance agricultural productivity.
3. China will increase exports and aid to countries facing food shortages.
4. In the coming five years, China will give 10,000 more scholarships to other developing countries and offer training programs exclusively for 1,500 principals and teachers from African countries. China will ensure that the 30 hospitals it builds for African countries are properly staffed and equipped, and train 1,000 doctors, nurses and managers for the recipient countries.
5. China will cancel the outstanding interest-free loans extended to LDCs that mature before the end of 2008, and give zero-tariff treatment to 95 per cent of products from the relevant LDCs.
6. In the coming five years, China will develop 100 small-scale clean energy projects for other developing countries, including small hydropower, solar power and bio-gas projects.

### **9. Six Measures for Foreign Aid Pledged by the Chinese Government at the 2010 UN High-Level Meeting on the Millennium Development Goals (September 2010)**

Retrieved from [http://news.xinhuanet.com/english2010/china/2011-04/21/c\\_13839683\\_22.htm](http://news.xinhuanet.com/english2010/china/2011-04/21/c_13839683_22.htm)

1. Helping improve the people's livelihood in developing countries is the primary objective of China's foreign aid. To date, China has built over 150 schools, nearly 100 hospitals, more than 70 drinking water facilities and 60-plus stadiums for other developing countries. China has sent more than 20,000 medical personnel to nearly 70 countries, offering treatment to hundreds of millions of patients. In the coming five years, China will take the following steps in support of a better livelihood for people in other developing countries: building 200 schools; dispatching 3,000 medical experts, training 5,000 local medical personnel, and providing medical equipment and medicines to 100 hospitals, with priority being given to women's and children's health, and the prevention and treatment of malaria, tuberculosis and AIDS; building 200 clean energy and environmental protection projects; and increasing assistance to small-island developing states in the fields of disaster prevention and mitigation to help build their capacity for countering climate change. China will, within the next three years, donate US\$14 million to the Global Fund to Fight AIDS, Tuberculosis and Malaria.
2. Reducing and cancelling the debts of the LDCs. By the end of 2009, the Chinese government had cancelled debts worth CNY25.6 billion owed to it by 50 HIPC and LDCs. Moreover, China will cancel their debts associated with the outstanding governmental interest-free loans that mature in 2010.
3. Deepening financial cooperation with developing countries. To help other developing countries counter the adverse effects of the international financial crisis, China has provided US\$10 billion in concessional loans to African countries and US\$15 billion in credit support to ASEAN countries, including Vietnam, Cambodia, Laos and Indonesia. China has contributed an additional US\$50 billion to the IMF, with an explicit request that the fund should be used, first and foremost, to help LDCs. China will continue to extend financial support of a certain scale to developing countries in the form of concessional loans and preferential export buyer's credit.

4. Broadening economic and trade ties with developing countries. China has worked consistently to create conditions for developing countries to increase their exports to China through tariff relief and other measures. China has made a commitment to phasing in zero-tariff treatment to 95 per cent of products from relevant LDCs. Since July 2010, China has given zero-tariff treatment to imported products from 33 LDCs covering more than 4,700 tariff lines, accounting for the overwhelming majority of the products from these countries. In the future, the Chinese government will give zero-tariff treatment to more products and let more countries benefit from this arrangement, while continuing to encourage Chinese companies to expand investment in developing countries.
5. Strengthening agricultural cooperation with developing countries. China has completed more than 200 agricultural cooperation projects in developing countries, and sent a large number of agro-technology experts to those countries, giving a strong boost to their agricultural development. In the next five years, China will dispatch 3,000 agricultural experts and technical staff abroad, provide 5,000 agriculture-related training opportunities in China, and give priority to cooperation with other developing countries in agricultural planning, hybrid rice cultivation, aquaculture, farmland water conservancy and agricultural machinery development.
6. Helping developing countries enhance their human resources. China has held over 4,000 training courses and trained 120,000 managerial and technical personnel in various professions for developing countries, helping recipient countries build human resources, which are their most valuable assets. In the next five years, China will train another 80,000 professionals in various fields for developing countries. It will also increase the number of scholarships and on-the-job master's degree programs for people from developing countries, and provide training opportunities in China to 3,000 school principals and teachers.

## 10. *Twelfth Five-Year Plan, 2011–2015* (Chapters 52 & 53) (National People's Congress, March 2011)

Source: Unofficial translation from the Delegation of the European Union in China. Retrieved from [http://cbi.typepad.com/china\\_direct/2011/05/chinas-twelfth-five-new-plan-the-full-english-version.html](http://cbi.typepad.com/china_direct/2011/05/chinas-twelfth-five-new-plan-the-full-english-version.html)

### **Chapter 52: Coordinate “Bring in” and “Going Out”**

China will continue the combination of the strategies “bringing in” and “going out” and [will] pay equal attention to both foreign investment in China and Chinese investments abroad in order to increase safe and effective use of the two markets and their resources.

#### **Section One: Increasing the level of foreign capital usage**

China will optimize the structure of foreign capital, guide foreign investment to the sectors of modern agriculture, high-end technology, advanced manufacturing, energy conservation, new energy, modern service industry etc. and encourage foreign capital to be invested in the middle and western parts of China. China will encourage foreign capital to use different means to take part in merger and acquisitions of domestic enterprises, such as buying shares, joint ventures etc. China will bring in senior talent and advanced technology from overseas, encourage foreign enterprises to set up R&D centres in China, learn advanced international management concepts and systems, actively integrate into the global innovation system, optimize the soft environment of investments and protect the legal rights of investors. China will conduct the National Security Review of foreign mergers and acquisitions in a [proper] manner. Favourable foreign lending and international commercial lending will be used effectively to optimize the management of foreign debt.

## **Section Two: Speeding up the implementation of the ["Going Global"] strategy**

China will follow the strategy of market orientation and self-willingness of enterprises to guide enterprises with different ownership to develop overseas investment cooperation in an orderly manner. China will deepen the development of international energy resources and mutually beneficial processing cooperation. China will support the carrying out of technology R&D investment cooperation abroad and encourage leading enterprises in the manufacturing industry to conduct outward investment to create internationalized marketing and sales channels and famous brands. China will enlarge international cooperation in the agricultural sector and develop overseas project contracts, labour cooperation and cooperation projects that can improve living standards in local areas. China will gradually develop its own large cross-country corporations and cross country financial institutions to increase China's level of international operations. China will conduct research for overseas investment environments and enhance scientific evaluation of investment projects. China will increase its ability of comprehensive all-around consideration, optimize the cross-agency coordination system, and enhance the guidance and services to enforce the ["Going Global"] strategy. The formulation of laws and regulations concerning overseas investments will be speeded up and optimised. China will actively discuss and sign mutual agreements on investment protection and agreements to avoid double taxation as well as other multilateral or bilateral agreements. China's overseas investment promotional system will be improved to increase the level of investment facilitation for enterprises to invest overseas and to protect the overseas rights of China and to avoid different kinds of risks. The enterprises that are "going out" and their overseas cooperation projects should bear corporate social responsibility in mind in order to bring benefits to the local people.

## **Chapter 53: Actively participate in global economic governance and regional cooperation**

China is to expand exchange and cooperation with developed countries to obtain an increase of mutual trust and a higher level of cooperation. In order to maintain peace and stability and to promote prosperity and development in the region, friendly relationships and pragmatic cooperation with neighbouring countries will be deepened. China will strengthen unity and cooperation with developing countries, deepen traditional friendships, and maintain common interest. Multilateral cooperation will be [actively] developed.

China will push for a reform of the international economic system and [encourage] the international economic order to develop in a more fair and reasonable direction. China will [actively] participate in the G20's global economic governance mechanism in order to promote and build a balanced, commonly beneficial "win-win" situation of the multilateral trade system. China will work against all kinds of protectionism. Furthermore, China will actively promote a reform of the international financial system and [rationalization of] the international currency system. Coordination with the major economic bodies' macroeconomic policies will be strengthened. Finally, China will actively take part in the drafting and amending of the international regulations and standards to increase its influence in international economic and financial organizations.

China will speed up the formulation of Free Trade Zones, further enhance the economic relations between China and its major trading partners, and deepen the pragmatic cooperation with both emerging market countries and developing countries. China should use APEC, as well as other international or sub-regional cooperation mechanisms, and enhance regional cooperation with other countries and regions. South-South cooperation should be enhanced. China will optimize the foreign aid structure, innovate the manner of providing foreign aid, increase economic and technology aid in the areas such as people's livelihood and welfare projects in developing countries, social public facility, and self-development capacity building.

The organic unity of adherence to leadership by the Party, ensuring that the people are masters of the country and governing the country according to law must be upheld, while developing socialist democracy, accelerating the building of a socialist country under the rule of law..

## 11. *White Paper on China's Foreign Aid* (Information Office of the State Council, April 2011)

Retrieved from [http://news.xinhuanet.com/english2010/china/2011-04/21/c\\_13839683.htm](http://news.xinhuanet.com/english2010/china/2011-04/21/c_13839683.htm)

### **Preface**

China is a developing country. Over the years, while focusing on its own development, China has been providing aid to the best of its ability to other developing countries with economic difficulties, and fulfilling its due international obligations.

In the 1950s, soon after the founding of the People's Republic of China, although it was short of funds and materials, China began to provide economic aid and technical assistance to other countries, and gradually expanded the scope of such aid. Since China adopted the reform and opening-up policies in the late 1970s, its economy has been developing rapidly, with the overall national strength growing notably. However, China remains a developing country with a low per-capita income and a large poverty-stricken population. In spite of this, China has been doing its best to provide foreign aid, to help recipient countries to strengthen their self-development capacity, enrich and improve their peoples' livelihood, and promote their economic growth and social progress. Through foreign aid, China has consolidated friendly relations and economic and trade cooperation with other developing countries, promoted South-South cooperation and contributed to the common development of mankind.

Adhering to equality and mutual benefit, stressing substantial results, and keeping pace with the times without imposing any political conditions on recipient countries, China's foreign aid has emerged as a model with its own characteristics.

### **I. Foreign Aid Policy**

#### **Course of Development in Foreign Aid**

China's foreign aid began in 1950, when it provided material assistance to the Democratic People's Republic of Korea (DPRK) and Vietnam, two neighbouring countries having friendly relations with China. Following the Asian-African Conference in Bandung, Indonesia in 1955, the scope of China's aid extended from socialist countries to other developing countries, along with the improvement of China's foreign relations. In 1956, China began to aid African countries. In 1964, the Chinese government declared the Eight Principles for Economic Aid and Technical Assistance to Other Countries, the core content of which featured equality, mutual benefit and no strings attached: hence the basic principle for China's foreign aid was formulated. In October 1971, with the support of other developing countries, China resumed its legal seat in the United Nations, established relations of economic and technical cooperation with more developing countries, and funded the Tanzania-Zambia Railway (TAZARA) and other major infrastructure projects. In this period, China overcame its own difficulties, and provided maximum assistance it could afford to other developing countries in their efforts to win national independence and to develop national economy, thus laying a solid foundation for its long-term friendly cooperation with developing countries.

After the adoption of the policies of reform and opening up in 1978, China's economic cooperation with other developing countries extended from economic aid to multi-form and mutually beneficial cooperation. China adjusted the scale, arrangement, structure and sectors of its foreign aid in accordance with its actual conditions. It strengthened its foreign assistance to the least developed countries, paid more attention to the economic and long-term effects of aid projects, and provided aid in more diversified and flexible ways. To consolidate the achievements of existing productive projects, China conducted multi-form technical and managerial cooperation with recipient countries, such as managing aid projects on behalf of recipient countries, lease management and joint ventures. After adopting the aforesaid cooperation models, some already-completed productive projects accomplished more than traditional technical cooperation in improving enterprise management and production



level. Through adjustment and consolidation, China's foreign aid embarked on a development road which suits better to China's actual conditions and the needs of recipient countries.

In the 1990s, in the course of the shift from the planned economy to the socialist market economy, China took a series of measures to reform its foreign aid mechanism, focusing on diversifying the sources and means of funding. In 1993, the Chinese government set up the Foreign Aid Fund for Joint Ventures and Cooperative Projects with parts of the interest-free loans repaid to China by developing countries. The fund was mainly used to support Chinese small- and medium-sized enterprises to build joint ventures or conduct cooperation with the recipient countries in the production and operation spheres. In 1995, China, via the Export-Import Bank of China, began to provide medium- and long-term low-interest loans to other developing countries, effectively expanding funding sources of its foreign aid. Meanwhile, it attached greater importance to supporting the capacity building of recipient countries, and kept enlarging the scale of technical training. Officials from recipient countries receiving training in China became an important part in the cooperation of human resources development between China and those countries. In 2000, the Forum on China-Africa Cooperation (FOCAC) was initiated, and it became an important platform for dialogue between China and friendly African countries and an effective mechanism for pragmatic cooperation in the new circumstances. Through reforms in this period, China further expanded its foreign aid with more notable effects.

In the 21st century, especially since 2004, on the basis of sustained and rapid economic growth and enhanced overall national strength, China's financial resource for foreign aid has increased rapidly, averaging 29.4 per cent from 2004 to 2009. In addition to deciding aid projects arranged through traditional bilateral channels, group consultations were held by China with recipient countries at the international and regional levels. The Chinese government announced a series of well-targeted foreign aid policies at many international and regional conferences, such as the UN High-Level Meeting on Financing for Development, UN High-Level Meeting on the Millennium Development Goals, Forum on China-Africa Cooperation, Shanghai Cooperation Organization, China-ASEAN Leaders Meeting, China-Caribbean Economic & Trade Cooperation Forum, China-Pacific Island Countries Economic Development & Cooperation Forum, and Forum on Economic and Trade Cooperation between China and Portuguese-Speaking Countries, to strengthen foreign aid in the fields of agriculture, infrastructure, education, health care, human resources, and clean energy. In August 2010, the Chinese government held the National Conference on Foreign Aid to summarize its experience of foreign aid work, and define the major tasks for strengthening and improving foreign aid in new circumstances. China's foreign aid thus entered a new stage.

### **Foreign Aid Policy**

[The characteristics of] China's foreign aid policy [have reflected] the times. It is suited both to China's actual conditions and the needs of the recipient countries. China has been constantly enriching, improving and developing the Eight Principles for Economic Aid and Technical Assistance to Other Countries—the guiding principles of China's foreign aid put forward in the 1960s. China is the world's largest developing country, with a large population, a poor foundation and uneven economic development. As development remains an arduous and long-standing task, China's foreign aid falls into the category of South-South cooperation and is mutual help between developing countries.

Basic features of China's foreign aid policy are as follows:

- [Constantly] helping recipient countries build up their self-development capacity. Practice has proved that a country's development depends mainly on its own strength. In providing foreign aid, China does its best to help recipient countries to foster local personnel and technical forces, build infrastructure, and develop and use domestic resources, so as to lay a foundation for future development and embarkation on the road of self-reliance and independent development.
- Imposing no political conditions. China upholds the Five Principles of Peaceful Coexistence, respects recipient countries' right to independently select their own path and model of development, and believes that every country should explore a development path suitable to its actual conditions. China never uses foreign aid as a means to interfere in recipient countries' internal affairs or seek political privileges for itself.
- Adhering to equality, mutual benefit and common development. China maintains that foreign aid is mutual help between developing countries, focuses on practical effects, accommodates recipient countries' interests, and strives to promote friendly bilateral relations and mutual benefit through economic and technical cooperation with other developing countries.
- Remaining realistic while striving for the best. China provides foreign aid within the reach of its abilities in accordance with its national conditions. Giving full play to its comparative advantages, China does its utmost to tailor its aid to the actual needs of recipient countries.
- Keeping pace with the times and paying attention to reform and innovation. China adapts its foreign aid to the development of both domestic and international situations, pays attention to summarizing experiences, makes innovations in the field of foreign aid, and promptly adjusts and reforms the management mechanism, so as to constantly improve its foreign aid work.

## II. Financial Resources for Foreign Aid

Financial resources provided by China for foreign aid mainly fall into three types: grants (aid gratis), interest-free loans and concessional loans. The first two come from China's state finances, while concessional loans are provided by the Export-Import Bank of China as designated by the Chinese government. By the end of 2009, China had provided a total of CNY256.29 billion in aid to foreign countries, including CNY106.2 billion in grants, CNY76.54 billion in interest-free loans and CNY73.55 billion in concessional loans.

Foreign aid expenditure is part of the state expenditure, under the unified management of the Ministry of Finance in its budgets and final accounts system. The Ministry of Commerce and other departments under the State Council that are responsible for the management of foreign aid handle financial resources for foreign aid in their own departments in accordance with their respective jurisdictions. Each of these departments draws up a budget for foreign aid projects every year and submits it to the Ministry of Finance for examination, and then to the State Council and the National People's Congress for approval and implementation. Each department controls and manages its own funds for foreign aid projects in its budget. The Ministry of Finance and the National Audit Office supervise and audit the implementation of foreign aid budget funds of these departments based on relevant state laws, regulations and financial rules.

### Grants

Grants are mainly used to help recipient countries to build hospitals, schools and low-cost houses, and support well-digging or water-supply projects, and other medium and small projects for social welfare. In addition, grants are used in projects in the fields of human resources development cooperation, technical cooperation, assistance in kind and emergency humanitarian aid.

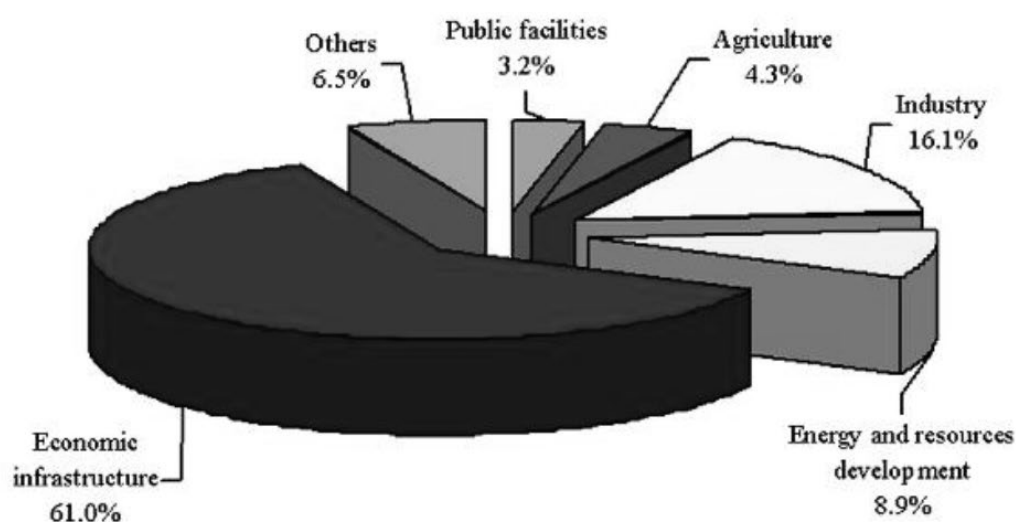
### Interest-free Loans

Interest-free loans are mainly used to help recipient countries to construct public facilities and launch projects to improve people's livelihood. The tenure of such loans is usually 20 years, including five years of use, five years of grace and 10 years of repayment. Currently, interest-free loans are mainly provided to developing countries with relatively good economic conditions.

### Concessional Loans

Concessional loans are mainly used to help recipient countries to undertake productive projects generating both economic and social benefits and large and medium-sized infrastructure projects, or to provide complete plant, mechanical and electrical products, technical services and other materials. Concessional loans are raised by the Export-Import Bank of China on the market, and since the loan interest is lower than the benchmark interest of the People's Bank of China, the difference is made up by the State as financial subsidies. At present, the annual interest rate of China's concessional loans is between 2 per cent and 3 per cent, and the period of repayment is usually 15 to 20 years (including five to seven years of grace). By the end of 2009, China had provided concessional loans to 76 foreign countries, supporting 325 projects, of which 142 had been completed. Of China's concessional loans, 61 per cent are used to help developing countries to construct transportation, communications and electricity infrastructure, and 8.9 per cent are used to support the development of energy and resources such as oil and minerals.

Figure 1: Sectoral Distribution of Concessional Loans from China (by the end of 2009)



[This] graphic shows the figures of sectoral distribution of concessional loans from China to other developing countries by the end of 2009, according to a white paper on China's foreign aid issued by China's Information Office of the State Council on April 21, 2011. (Source: Xinhua/China's Information Office of the State Council).

### III. Forms of Foreign Aid

China offers foreign aid in eight forms: complete projects, goods and materials, technical cooperation, human resource development cooperation, medical teams sent abroad, emergency humanitarian aid, volunteer programs in foreign countries, and debt relief.

#### Complete Projects

Complete projects [are] productive or civil projects constructed in recipient countries with the help of financial resources provided by China as grants or interest-free loans. The Chinese side is responsible for the whole or part of the process, from study, survey, to design and construction, provides all or part of the equipment and building materials, and sends engineers and technical personnel to organize and guide the construction, installation and trial production of these projects. After a project is completed, China hands it over to the recipient country.

Complete projects are a major form of China's foreign aid. [Starting in] 1954, China helped Vietnam and DPRK repair war-damaged railways, roads, ports, bridges and urban transport facilities, and assisted them in building a number of basic industrial projects, thus making great contributions to their post-war reconstruction and economic development. Later, foreign aid in complete projects expanded in scale and scope, and accounted for a bigger proportion among China's foreign aid expenditure. At present, they account for 40 per cent of China's foreign aid expenditure.

By the end of 2009, China had helped developing countries construct and complete over 2,000 complete projects closely linked to local people's life and production, covering industry, agriculture, culture and education, health care, communication, power supply, energy, transportation and others.

*Table 1 Sectoral Distribution of Complete Projects Overseas Completed with the Help of China (by the end of 2009)*

| SECTOR                                  | NUMBER OF PROJECTS |
|---|--------------------|
| <b>Agriculture</b>                      | <b>215</b>         |
| Farming, animal husbandry and fisheries | 168                |
| Water conservancy                       | 47                 |
| <b>Public Facilities</b>                | <b>670</b>         |
| Conference buildings                    | 85                 |
| Sports facilities                       | 85                 |
| Theaters & Cinemas                      | 12                 |
| Civil buildings                         | 143                |
| Municipal facilities                    | 37                 |
| Wells and water supply                  | 72                 |
| Science, education and health care      | 236                |
| <b>Economic Infrastructure</b>          | <b>390</b>         |
| Transport                               | 201                |
| Power supply                            | 97                 |
| Broadcasting and telecommunications     | 92                 |
| <b>Industry</b>                         | <b>635</b>         |
| Light industry                          | 320                |
| Textiles                                | 74                 |

|  |              |
|--|--------------|
| Radio and electronics                          | 15           |
| Machinery industry                             | 66           |
| Chemical industry                              | 48           |
| Timber processing                              | 10           |
| Building materials processing                  | 42           |
| Metallurgical industry                         | 22           |
| Coal industry                                  | 7            |
| Oil industry                                   | 19           |
| Geological prospecting and mineral exploration | 12           |
| <b>Others</b>                                  | <b>115</b>   |
| <b>Total</b>                                   | <b>2,025</b> |

Note: Data in this table exclude projects undertaken with concessional loans.

This table shows the sectoral distribution of complete projects overseas completed with the help of China by the end of 2009, according to a white paper on China's foreign aid issued by China's Information Office of the State Council on April 21, 2011. (Source: Xinhua/China's Information Office of the State Council).

### Goods and Materials

They include materials for production and living, technical products or single-item equipment, and necessary technical services covered by foreign aid financial resources provided by China.

China started foreign aid by providing goods and materials. In the 1950s and 1960s, China was short of goods and materials at home, but to help Asian and African countries win national independence and develop their economies, it provided [them] with a large amount of goods and materials. In addition, China provided supporting equipment and materials for complete projects. China always uses products of the highest quality for foreign aid, and the materials it provides include machinery, equipment, medical devices, testing equipment, transport vehicles, office equipment, food and medicine. These supplies meet recipient countries' urgent needs in life and production, and some equipment (such as civil airplanes, locomotives and container-testing equipment) [has] helped recipient countries improve their equipment capacity and develop their industries.

### Technical Cooperation

*Technical cooperation* means that China dispatches experts to give technical guidance on production, operation or maintenance of complete projects after they are completed, and train local people as managerial and technical personnel; to help developing countries grow crops, raise animals and process products on a trial basis, and teach local people China's agricultural technologies and traditional handicraft skills; and to help developing countries in inspection, survey, planning, research and consultation work [in certain] industries.

Technical cooperation is an important means by which China helps recipient countries to strengthen their self-development capacity. It covers a wide range of fields, including industrial production and management, farming and poultry raising, handicrafts such as weaving and embroidery, culture and education, sports and physical training, medical and health care, clean energy development such as bio-gas and small hydropower generation, geological survey and prospecting, and economic planning. Technical cooperation projects usually last one to two years, and can be extended at the recipient country's request.

### **Human Resource Development Cooperation**

*Human resource development cooperation* means that China, through multilateral or bilateral channels, runs different kinds of research and training programs for government officials, education programs, technical training programs, and other personnel exchange programs for developing countries.

China started to run such programs in 1953. From then until 1979, China hosted a large number of trainees from the DPRK, Vietnam, Albania, Cuba, Egypt and some other countries, covering over 20 sectors including agriculture and forestry, water conservancy, light industry, textiles, transportation and health care. Since 1981, China has worked with the United Nations Development Program and hosted training courses in practical techniques in different fields for developing countries. In 1998, the Chinese government began to run seminars for officials. The departments involved and the scale and scope of such training programs have expanded rapidly. By the end of 2009, China had run over 4,000 training sessions of different types for developing countries, attended by some 120,000 people, including interns, managerial and technical personnel and officials. These trainees were from over 20 fields, including economy, diplomacy, agriculture, medical and health care, and environmental protection. At present, roughly 10,000 people from developing countries receive training in China every year. Moreover, China has trained a large number of managerial and technical personnel for recipient countries by means of technical cooperation and other ways.

### **Chinese Medical Teams Working Abroad**

China sends medical teams to recipient countries and provide free medical devices and medicines. These medical teams then provide location-based or touring medical services in those countries.

In 1963, China dispatched the first medical team to Algeria. So far, China has sent medical teams to 69 countries in Asia, Africa, Europe, Latin America, the Caribbean and Oceania. These teams usually work in underdeveloped areas where conditions are harsh and people lack medical services and medicines. These teams have cured many patients with common and frequently occurring diseases, and treated some complicated and serious diseases with acupuncture and moxibustion, medical massage and integrated use of traditional Chinese and Western medicine, saving many critically ill patients. They have also passed on their skills to local medical staff, helping improve local medical and health services. With sound medical skills, lofty medical ethics and a high sense of responsibility and mission, they have worked hard to serve the people of the recipient countries, and thus won respect and praise from the governments and peoples of these countries. By the end of 2009, China had altogether sent over 21,000 medical workers to other countries, and they have treated 260 million patients in recipient countries. In 2009, 60 Chinese medical teams composed of 1,324 members provided medical services at 130 medical institutions in 57 developing countries.

### **Emergency Humanitarian Aid**

Emergency humanitarian aid is provided when a country or region suffers a severe natural or humanitarian disaster. In such cases, China provides materials or cash for emergency relief or dispatches relief personnel of its own accord or at the victim country's request, so as to reduce losses of life and property in disaster-stricken areas and help the victim country tackle difficulties caused by the disaster.

Over the years, China has taken an active part in emergency relief operations in foreign countries and has been playing [an increasingly] important role in international emergency humanitarian relief. To make relief actions quicker and more effective, the Chinese government formally established a response mechanism for emergency humanitarian relief and aid in foreign countries in September 2004. In December 2004, when a tsunami hit countries by the Indian Ocean, China launched the largest ever emergency relief operation in its history, providing

CNY700 million worth of aid to the disaster-stricken countries. In the past five years, the Chinese government has provided emergency aid to foreign countries on nearly 200 occasions, including offering emergency technical aid to Southeast Asian countries for the prevention and treatment of bird flu; providing emergency aid in materials and cash to Guinea-Bissau hit by a locust plague and cholera, to Ecuador to fight dengue fever and to Mexico to fight influenza A (H1N1). It also assisted Iran, Pakistan, Haiti and Chile following severe earthquakes, Madagascar after a hurricane, Burma and Cuba following tropical storms, and Pakistan following a flood. In addition, it sent emergency food aid to DPRK, Bangladesh, Nepal, Afghanistan, Burundi, Lesotho, Zimbabwe, Mozambique and other countries.

### **Overseas Volunteer Programs**

China selects volunteers and sends them to other developing countries to serve the local people in education, medical and health care and some other social sectors. The volunteers now China sends mainly include young volunteers and Chinese-language teachers.

In May 2002, China dispatched, for the first time, five volunteers to Laos to provide services in education and medical and health care for half a year. By the end of 2009, China had dispatched to 19 developing countries, including Thailand, Ethiopia, Laos, Myanmar, Seychelles, Liberia and Guyana, 405 young volunteers who provide services in the fields of Chinese-language teaching, traditional Chinese medicine treatment, agricultural technology, sports and physical training, computer skills, international relief and so on. China has sent regular teams of volunteers to Ethiopia, Guyana and a few other countries. In 2003, China started to dispatch volunteer Chinese-language teachers to other countries. By the end of 2009, China had dispatched 7,590 Chinese-language teachers to over 70 countries around the world.

### **Debt Relief**

Debt relief means that China cancels the mature governmental debts [owed to China] of some developing countries. China never urges indebted countries to pay back governmental debts. When recipient countries encounter difficulties in repaying due interest-free loans, the Chinese government usually adopts flexible ways and extends the period of repayment through bilateral discussions. To reduce the debt burden on financially troubled countries, China has, on six occasions, declared that it would cancel debts incurred by mature interest-free loans owed to China by those heavily indebted poor countries and least developed countries which have diplomatic ties with China. Those occasions were the FOCAC First Ministerial Conference in 2000, UN High-Level Meeting on Financing for Development in 2005, Beijing Summit of the FOCAC in 2006, UN High-Level Meeting on the Millennium Development Goals in 2008, the FOCAC Fourth Ministerial Conference in 2009 and UN High-Level Meeting on the Millennium Development Goals in 2010. By the end of 2009, China had signed debt relief protocols with 50 countries from Africa, Asia, Latin America, the Caribbean and Oceania, cancelling 380 mature debts totalling CNY25.58 billion.

*Table 2: Statistics on Debts Owned to China That Have Been Cancelled by the Chinese Government (by the end of 2009)*

| REGION                          | NUMBER OF COUNTRIES | NUMBER OF DEBTS CANCELED | AMOUNT CANCELED (UNIT: 100 MILLION YEARS) |
|---------------------------------|---------------------|--------------------------|---|
| Africa                          | 35                  | 312                      | 189.6                                     |
| Asia                            | 10                  | 41                       | 59.9                                      |
| Latin America and the Caribbean | 2                   | 14                       | 4.0                                       |
| Oceania                         | 3                   | 13                       | 2.3                                       |
| <b>Total</b>                    | <b>50</b>           | <b>380</b>               | <b>255.8</b>                              |

Graphics shows the figures of debts owed to China that have been cancelled by the Chinese government by the end of 2009, according to a white paper on China's foreign aid issued by China's Information Office of the State Council on April 21, 2011 (Source: Xinhua/China's Information Office of the State Council).

#### **IV. Distribution of Foreign Aid**

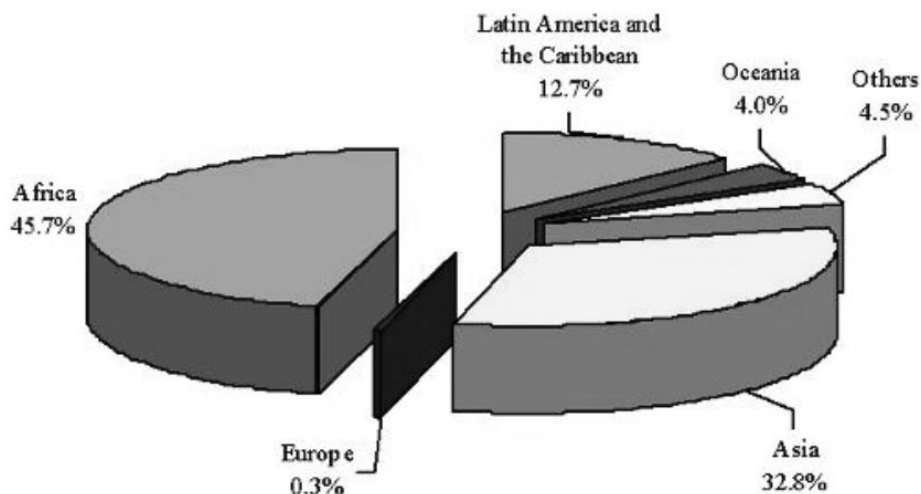
The recipients of China's foreign aid are mainly low-income developing countries. Regarding the distribution of its foreign aid, China sets great store by people's living conditions and economic development of recipient countries, making great efforts to ensure its aid benefits as many needy people as possible.

##### **Geographical Distribution**

The geographical distribution of China's foreign aid shows a comparatively even coverage. The recipients cover most developing countries in Asia, Africa, Latin America, the Caribbean, Oceania and Eastern Europe. About two-thirds of China's aid always goes to the least developed countries and other low-income countries. By the end of 2009, China had aided 161 countries and more than 30 international and regional organizations, including 123 developing countries that receive aid from China regularly. Of them, 30 are in Asia, 51 in Africa, 18 in Latin America and the Caribbean, 12 in Oceania and 12 in Eastern Europe. Asia and Africa, home to the largest poor population, have [received] about 80 per cent of China's foreign aid.

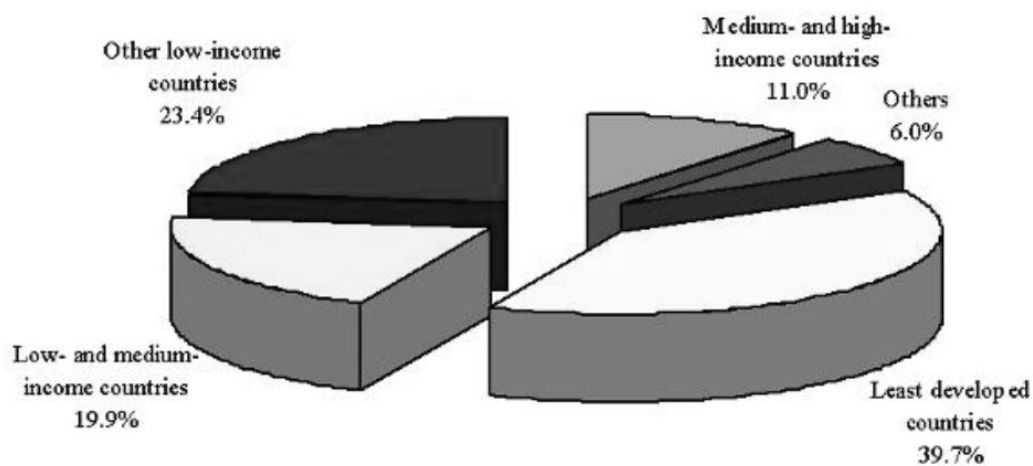


Figure 2: Geographical Distribution of China's Foreign Aid Funds in 2009



[This] graphic [illustrates the] geographical distribution of China's foreign aid funds in 2009, according to a white paper on China's foreign aid issued by China's Information Office of the State Council on April 21, 2011 (Source: Xinhua/China's Information Office of the State Council).

Figure 3: Distribution of China's Foreign Aid According to the Income Level of Recipient Countries in 2009



[This] graphic shows the distribution of China's foreign aid according to the income level of recipient countries in 2009, according to a white paper on China's foreign aid issued by China's Information Office of the State Council on April 21, 2011. (Xinhua/China's Information Office of the State Council).

## Major Fields

China's foreign aid projects are oriented to agriculture, industry, economic infrastructure, public facilities, education, and medical and health care, with the focus on improving recipient countries' industrial and agricultural productivity, laying a solid foundation for their economic and social development, and improving basic education and health care. In recent years, coping with climate change has become a new area in China's foreign aid.

## Agriculture

China makes agriculture, rural development and poverty reduction in developing countries priorities of its foreign aid. The agricultural aid mainly covers building farms, agro-technology demonstration centres, and experiment and promotion stations of agro-technology; constructing farmland irrigation and water-conservancy projects; supplying agricultural machinery and implements, farm produce processing equipment and related agricultural materials; dispatching agro-technicians and senior agricultural experts to pass on agricultural production technologies and provide consultations on rural development, and training agricultural personnel for recipient countries. Agricultural projects aided by China have promoted agricultural development in recipient countries, increased their output of grain and cash crops, and provided raw materials for the development of their light industry. In Guinea-Bissau, Chinese agricultural experts helped build 11 demonstration areas for paddy rice, with a total growing area of 2,000 hectares. They bred 530 tonnes of fine strains of rice, which were planted in areas totalling 3,530 hectares. Several of the rice strains produced an output three times or more than the original output. In 2008, the Chinese agricultural experts were awarded first prize for scientific and technological progress by the Agricultural Department of Guinea-Bissau. Chinese experts assisted in the operation of a hybrid rice development and demonstration centre in Madagascar, where 34 strains of Chinese hybrid paddy rice were grown, with average per hectare output of eight tonnes, about two to three times the average output of local paddy rice. In the 1960s and 1970s, after succeeding in helping Mali grow sugarcane, China went on to help the country establish sugarcane farm and sugar mills, enabling Mali to grow and process sugar by itself for the first time ever. This sugar-making corporation is playing an important role in Mali's economy. In the 1980s, China helped Tunisia construct the Medzerdah-Cap Bon Canal, which enabled the transfer of water from west to east for farmland irrigation, laying a solid foundation for agricultural development in [that country].

China has been increasing its aid for agriculture and grain production in particular. In recent years, food security has become a global issue, and China has adopted a series of measures to address this problem in its foreign aid. For instance, at the UN High-Level Meeting on the Millennium Development Goals in 2010, China pledged to establish 30 demonstration centres for agricultural technologies in other developing countries, dispatch 3,000 agricultural experts and technicians to these countries, and invite 5,000 agricultural personnel from these countries to China for training.

By the end of 2009, China had aided 221 agricultural projects in other developing countries—35 farms, 47 agro-technology experiment and promotion stations, 11 animal husbandry projects, 15 fisheries projects, 47 farmland irrigation and water-conservancy projects, and 66 other types of agricultural projects. On top of that, China had provided a large amount of agricultural equipment and materials to them.

## Industry

Industrial aid was an important part of China's foreign aid in its early stage. From the 1950s to the 1970s, China helped many newly-independent Asian and African countries undertake a number of industrial projects. These projects, many of them first ever of their kind in these countries, laid the foundation for their industrial development. Industrial aid increased rapidly in the 1970s, constituting an important part of China's complete projects aid to other countries at that time. Since the mid-1980s, [has] China gradually reduced its aid in this regard, as many

developing countries stepped up privatization in the industrial sector. The industrial projects established with China's help have played an active role in promoting production and economic development, creating jobs, increasing tax revenues and invigorating markets in the recipient countries. By the end of 2009, China had helped developing countries construct 688 industrial production projects, covering light, textile, machinery, chemical, metallurgical, electronic, construction materials, and energy industries. Of these, the Hama Textile Mill in Syria, the Cement Factory in Rwanda, the Rioja Cement Factory in Peru, the Agriculture Machinery Factory in Myanmar and the Loutete Cement Factory in the Republic of Congo are always profitable. They employ a large number of local people and yield sound economic and social benefits.

### **Economic Infrastructure**

Economic infrastructure construction is always an important part of China's foreign aid. Despite its limited foreign aid funds, China has made full use of the mature technologies and relatively low cost of manpower to help other developing countries construct a host of infrastructure projects in transportation, communication, power supply, etc. By the end of 2009, China had helped other developing countries build 442 economic infrastructure projects, such as the Sana'a-Hodeida Highway in Yemen, the Karakoram Highway and Gwadar Port in Pakistan, the Tanzania-Zambia Railway, the Belet Uen-Burao Highway in Somalia, the Dry Dock in Malta, the Lagdo Hydropower Station in Cameroon, Nouakchott's Friendship Port in Mauritania, railway improvement in Botswana, six bridges in Bangladesh, one section of the Kunming-Bangkok Highway in Laos, the Greater Mekong Sub-region Information Highway in Myanmar, the Shar-Shar Tunnel in Tajikistan, the No.7 Highway in Cambodia, and the Gotera Interchange in Addis Ababa of Ethiopia. These projects have helped improve the environment of life and production for the local people, and created better conditions for the development of the local economy and society.

### **Public Facilities**

Public facilities built with aid from China in other developing countries mainly include municipal utilities, civilian buildings, wells for water supply, conference centres, sports venues, culture venues, and facilities for scientific, educational and medical care purposes. By the end of 2009, China had helped other developing countries build 687 public facilities of various kinds. The major ones include the Bandaranaike Memorial International Conference Hall in Sri Lanka, the Friendship Hall in Sudan, the National Theatre of Ghana, the Cairo International Convention and Exhibition Center in Egypt, the Radio and Television Broadcast Center in Comoros, the International Convention Center in Myanmar, the Moi International Sports Center in Kenya, the Multi-Functional Sports Stadium in Fiji and the Tanzania National Stadium. They have all become centres for social, political and cultural activities as well as landmark buildings. Some public welfare facilities, including the Capital Water Supply Project in Nouakchott, Mauritania, the Well-Drilling Project in Cambodia, the Water Supply Project in Chalinze, Tanzania, and the Water Supply Project in Zinder, Niger, low-cost housing projects in Angola and Surinam, have played an active role in improving the living conditions of local poor people.

### **Education**

The Chinese government always attaches great importance to aid in education for other developing countries. Most of China's foreign aid for education is spent in building schools, providing teaching equipment and materials, dispatching teachers, training teachers and interns from other developing countries and offering government scholarships to students from other developing countries to study in China.

In the 1950s, China began to provide financial support to students from other developing countries coming to China to study, and aid Asian and African countries to build their own colleges and technical schools, providing them with teaching instruments and laboratory equipment. Since the 1960s, China has dispatched Chinese

teachers to other developing countries. In the 1970s and 1980s, at the request of some countries, China began to train middle- and high-level technicians and managerial personnel from these countries, who would work for complete projects undertaken with Chinese aid, including the Tanzania-Zambia Railway, the Friendship Port in Mauritania, a coal mine in Tanzania and a textile factory in Guyana. In recent years, China has strengthened its aid for education in other developing countries, helping them build nearly 100 rural primary schools, increasing government scholarships and the number of teachers who come to receive training in China, dispatching more Chinese teachers abroad to help build up the weak academic disciplines, and enhancing cooperation with other developing countries in vocational, technical education and distance education. Educational aid from China has helped recipient countries train a large number of qualified personnel in the fields of education, management, and science and technology, and rendered intellectual support for their social and economic development.

By the end of 2009, China had helped other developing countries build more than 130 schools, and funded 70,627 students from 119 developing countries to study in China. In 2009 alone, it extended scholarships to 11,185 foreign students who study in China. Furthermore, China has dispatched nearly 10,000 Chinese teachers to other developing countries, and trained more than 10,000 principals and teachers for them.

### **Medicine and Public Health**

Medical aid plays an important role in China's foreign aid. It mainly covers building hospitals and medical care centres, and establishing malaria prevention and treatment centres; dispatching medical teams; training medical workers; and providing medicines and other medical materials. By the end of 2009, China had aided other developing countries to build more than 100 hospitals and medical care centres, and provided them with a large amount of medical equipment and medicines. At present, over 30 hospitals are under construction with the help of China.

Many hospitals built with aid from China, such as the Ta'izz Revolution Comprehensive Hospital in Yemen, and hospitals in the Central African Republic, Guinea-Bissau, Zimbabwe, Chad and Laos, have contributed much to solving local people's difficulties in getting medical service. In recent years, China has strengthened exchanges and cooperation with developing countries, especially African countries, in the prevention and treatment of infectious diseases like AIDS and malaria, and in the research and application of traditional medicines. China has also trained a large number of medical workers for other developing countries. In the last three years, China has built 30 malaria prevention and treatment centres in African countries, and provided artemisinin anti-malaria medicines worth CNY190 million. China's aid has made a positive contribution to the development of medical undertakings, improvement of the medical care infrastructure and advance of medical treatment technologies in the recipient countries.

### **Clean Energy and Coping with Climate Change**

China was one of the first countries to develop clean energy sources such as bio-gas and small hydropower stations. Thus, it has advantages in this regard when it comes to foreign aid. At the beginning of its foreign aid efforts, China helped developing countries in Asia and Africa in utilizing local water resources to build small- and medium-sized hydropower stations and projects of power transmission to meet the needs for electricity by local people as well as by agricultural and industrial production. In the 1980s, by working with relevant agencies of the United Nations, China provided bio-gas technologies to many developing countries. Meanwhile, China passed on bio-gas technologies to Guyana and Uganda by way of bilateral aid. China's efforts achieved the expected results and helped the recipient countries reduce their dependence on imported fuels.

China has steadily increased [its] aid [aimed at] coping with climate change. In recent years, as the problem of global warming has [worsened], China has expanded the scope of relevant aid to other countries. China [has]

cooperated with Tunisia, Guinea, Vanuatu and Cuba in utilizing bio-gas, assisted in the building of hydropower stations in Cameroon, Burundi and Guinea, and cooperated with Mongolia, Lebanon, Morocco and Papua New Guinea in exploring solar energy and building wind-power stations. In addition, China has held training courses on clean energy sources and climate change for other developing countries. From 2000 to 2009, China held 50 training workshops attended by more than 1,400 people from other developing countries on the development and use of renewable resources such as bio-gas, solar energy, and small hydropower stations, as well as forestry management, and desertification treatment and prevention.

## **V. Management of Foreign Aid**

Decision-making power in China regarding foreign aid lies with the central government. Ever since the 1950s, with the development of foreign relations and foreign aid, agencies at various levels of the Chinese government responsible for the management of foreign aid have been gradually established and improved, and management of projects has been gradually strengthened.

The Ministry of Commerce of the People's Republic of China is the administrative department authorized by the State Council to oversee foreign aid. It is responsible for the formulation of foreign aid policies, regulations, overall and annual plans, examination and approval of foreign aid projects and management of the project execution. The Executive Bureau of International Economic Cooperation, China International Center for Economic and Technical Exchanges, and Academy of International Business Officials affiliated to the Ministry of Commerce are entrusted with tasks of managing the implementation of complete projects and technical cooperation projects, material aid projects and training programs connected with China's foreign aid. The Export-Import Bank of China is responsible for the assessment of projects with concessional loans, and the allocation and recovery of loans. Chinese embassies or consulates abroad are in charge of the direct coordination and management of foreign aid projects in the relevant countries. The local commercial administration departments are required to cooperate with the Ministry of Commerce to deal with affairs related to foreign aid within its jurisdiction.

In providing foreign aid, the related departments of the Chinese government keep in close contact and cooperate with each other. In drafting foreign aid programs and foreign aid funds plans for each country, the Ministry of Commerce communicates regularly with the Ministry of Foreign Affairs, Ministry of Finance and the Export-Import Bank of China to seek their suggestions. Some other departments of the State Council are responsible for or participate in the management of foreign aid programs that require [greater] professional expertise. In order to strengthen the coordination of the departments concerned, the ministries of commerce, foreign affairs and finance officially established the country's foreign aid interagency liaison mechanism in 2008. In February 2011, this liaison mechanism was upgraded into an interagency coordination mechanism.

## **VI. International Cooperation in Foreign Aid**

China's foreign aid is provided mainly through bilateral channels. At the same time, China also has done its best to support and participate in aid programs initiated by organizations like the United Nations, and has actively conducted exchanges and explored practical cooperation with multilateral organizations and other countries in the field of development assistance with an open-minded attitude.

Since 2005, China has carried out exchanges in development assistance with many international multilateral organizations and countries. It has sent delegations to participate in conferences and dialogues on international development and cooperation such as the UN High-Level Meeting on Financing for Development, UN High-Level Meeting on the Millennium Development Goals, UN Development Cooperation Forum, High-Level Forum on Aid Effectiveness, Heiligendamm Process Dialogue between G8 and the five most important emerging economies, and WTO Global Review on Aid for Trade, to strengthen its communication and exchanges with other aid providers and promote South-South cooperation.

In addition to developing bilateral aid, China gets involved in trilateral and regional cooperation with some multilateral organizations and countries in capacity building, training and infrastructure construction that give full play to the advantages of all participants. Positive results have been achieved. In 1981, China worked with the United Nations Development Program (UNDP) to implement the Technical Cooperation among Developing Countries (TCDC) program in China; it has trained more than 6,000 technicians for other developing countries in more than 20 years. Since 1996, China has cooperated with the United Nations Food and Agriculture Organization (UNFAO) to send Chinese agricultural experts to developing countries. By the end of 2009, China had sent more than 700 agricultural experts and technicians to Africa, the Caribbean and the Asia-Pacific area. In the field of training, China has conducted effective cooperation with multilateral organizations such as the World Bank, the UN Conference on Trade and Development, the UN Industrial Development Organization and Singapore. Within the framework of the Greater Mekong Sub-regional cooperation, China, together with Thailand and the Asian Development Bank, raised funds to build the Laos section of the Kunming-Bangkok Highway, which was opened to traffic in March 2008. At present, China, Thailand, Laos and the Asian Development Bank are working together to build a bridge over the Mekong River for the Kunming-Bangkok Highway.

At present, the scope of international aid for development is being gradually expanded. South-South cooperation is developing rapidly, becoming an effective and beneficial supplement to South-North cooperation. Under the framework of South-South cooperation, China will work with all parties concerned to conduct complementary and fruitful trilateral and regional cooperation on the basis of respecting the needs of recipient countries and jointly promote the process of global poverty alleviation.

### **Conclusion**

Currently, the environment for global development is not favourable. With the repercussions of the international financial crisis continuing to linger, global concerns such as climate change, food crises, energy and resource security, and epidemics of diseases have brought new challenges to developing countries, aggravating the imbalance in the development of the global economy, and widening the gap between North and South, rich and poor. The international community should strengthen cooperation and jointly rise to the challenges facing development.

Against this background, China has a long way to go in providing foreign aid. The Chinese government will make efforts to optimize the country's foreign aid structure, improve the quality of foreign aid, further increase recipient countries' capacity in independent development, and improve the pertinence and effectiveness of foreign aid. As an important member of the international community, China will continue to promote South-South cooperation, as it always has done, gradually increase its foreign aid input on the basis of the continuous development of its economy, promote the realization of the UN Millennium Development Goals, and make unremitting efforts to build, together with other countries, a prosperous and harmonious world with lasting peace.

## Section Two: Key Implementation Measures Regarding General Approval and Support of Outward Investment<sup>4</sup>

### 12. Circular of the Ministry of Foreign Trade and Economic Cooperation and the Ministry of Finance on Printing and Distributing the Detailed Rules for the Implementation of the Measures for Administration of International Market Developing Funds of Small-and Medium-sized Enterprises (MOFTEC & MoF, June 2001)

Source: MOFCOM website. Retrieved from [http://www.fdi.gov.cn/pub/FDI\\_EN/Laws/law\\_en\\_info.jsp?docid=52230](http://www.fdi.gov.cn/pub/FDI_EN/Laws/law_en_info.jsp?docid=52230)

The commissions of foreign trade and economic cooperation, financial office, enterprise of foreign trade, bureaus of commerce (trade) of import and export, of all provinces, autonomous regions and municipalities directly under the Central Government, municipalities separately listed on the State plan:

In accordance with the spirit of the *Measures for Administration of International Market Developing Funds of Small- and Medium-sized Enterprises (for trial)* (CaiQi [2000] No.467), the MOFTEC and the Ministry of Finance have drawn up the *Detailed Rules for the Implementation of the Measures for Administration of International Market Developing Funds of Small-and Medium-sized Enterprises*, now printed and distributed to you: please carry out sincerely.

This is hereby the notification.

Attachment:

*Detailed Rules for the Implementation of the Measures for Administration of International Market Developing Funds of Small-and Medium-sized Enterprises (for Interim Implementation)*

#### Chapter 1: General Provisions

**Article 1** In order to strengthen the administration of international market developing funds of small-and medium-sized enterprises (hereinafter referred to as “market developing funds”) and to improve the use of the fund, the Detailed Rules for the Implementation of the Measures for Administration of International Market Developing Funds of Small-and Medium-Sized Enterprises (for provisional implementation) (hereinafter referred to as “Detailed Rules for Implementation”) are hereby formulated according to the Measures for Administration of International Market Developing Funds of Small-and Medium-Sized Enterprises (for provisional implementation) [CaiQi [2000] No.467, hereinafter referred to as “Measures for Administration”]

**Article 2** Market developing funds referred to in these Detailed Rules for Implementation include the governmental funds of the central treasury used to help the businesses and small-and medium-sized enterprises open up the international markets, and the special funds independently arranged by the treasuries.

**Article 3** The market developing funds are divided into two parts, one for central use and the other for local use, and adopt a two-level administration, central administration and local administration. The part for local use is composed of the special funds appropriated by the central financial budget and the special funds independently arranged by the local treasuries.

**Article 4** The administration and use of the market developing funds shall abide by the principles of openness and transparency, directional use, scientific administration and strengthened supervision.

<sup>4</sup> See explanatory text at footnote 2.

## **Chapter 2: Administrative Departments and their Functions and Responsibilities**

**Article 5** Foreign trade and economic departments and financial departments at all levels are the departments in charge of the market developing funds, and shall jointly administer the use of the market developing funds and the implementation of the projects. The foreign trade and economic departments are responsible for the administration of the operation of the market developing funds, including determining the support, direction and the scope of use of the market developing funds, proposing the annual project fund plan, and examining and proving the projects' use of the funds.

The financial departments are responsible for the budgeting and financial administration of the market developing funds, including examining and approving the annual project fund plan, appropriating the market developing funds, drawing up supervising requirements for the market developing funds, and shall follow and administer the projects and the use of the fund jointly with the foreign trade and economic departments.

**Article 6** Upon the approval of the foreign trade and economic departments and the financial departments at all levels, the undertaking units may be entrusted to be responsible for the specific administration of the operation of the market developing funds. The part for central use shall be undertaken by the Administrative Office of the International Market Developing Funds of Small- and Medium-Sized Enterprises (hereinafter referred to as the "Small- and Medium-Sized Enterprise Office") that is entrusted by the Ministry of Foreign Trade and Economic Cooperation and the Ministry of Finance; and the part for local use may be undertaken by the local undertaking units entrusted by local foreign trade and economic departments and financial departments, and shall be reported to the Ministry of Foreign Trade and Economic Cooperation and the Ministry of Finance for record.

Relevant work of the Small- and Medium-Sized Enterprise Office and local undertaking departments shall be under the supervision and guidance of the foreign trade and economic departments and financial departments.

**Article 7** The Small- and Medium-Sized Enterprise Office and local undertaking departments entrusted by the foreign trade and economic departments and the financial departments shall undertake the following tasks:

1. Being responsible for accepting the application for project fund plans, the application of project implementation and the application for project fund appropriation, and making the initial examination;
2. Drafting the annual project fund plans according to the applications for project fund plans;
3. Being responsible for the arrangement, collection, statistics and analysis of the material of applications for project fund plans, applications for project implementation and applications for project fund appropriation;
4. Helping the foreign trade and economic departments and the financial departments follow and inspect the use of the market developing funds;
5. Drafting reports of the implementation of the annual project fund plan; and
6. Being responsible for the publicity and training of the relevant administrative provisions on the market developing funds.

## **Chapter 3: Use of the Funds**

**Article 8** The market developing funds are used to help the small- and medium-sized enterprises open up international markets, and help the enterprises, social organizations, institutions serving the small- and medium-sized enterprises (hereinafter referred to as the "project organizing units") organize the small- and medium-sized enterprises.



**Article 9** The market developing funds are to support: holding or participating in overseas exhibitions; certification of quality administrative systems, environment administrative systems, software export enterprises and all kinds of products; publicity and recommendation to international markets; opening up new and emerging markets; organizing trainings and seminars; overseas bidding (bid negotiation) and other aspects (see attachment 1 for the specific support contents and standards).

**Article 10** The market developing funds are to prioritize support for the following activities:

1. Carrying out the strategy of market diversity, supporting the developing activities facing the new and emerging international markets of Latin America, Africa, Middle East, East Europe and South-East Asia, etc.;
2. Carrying out the strategy of winning by good quality and developing trade by science and technology, supporting the international market developing activities of mechanical and electrical products, high- and new-tech products, the products of which more than 70 per cent components are made [domestically] or products possessing independent intellectual property, etc.;
3. Supporting the activities of small- and medium-sized enterprises to get quality administrative system certification, environment administrative system certification and product certification; and
4. Supporting the international market developing activities of small- and medium-sized enterprises that have already obtained the quality administrative system certification, environment administrative system certification and product certification.

#### **Chapter 4: Targets of the Fund Use**

**Article 11** Applications of small- and medium-sized enterprises for opening up the international markets independently are enterprise project applications; applications of project organizing units for organizing small- and medium-sized enterprises to open up the international markets are organization project applications.

**Article 12** The small- and medium-sized enterprises meeting the following requirements may apply for enterprise projects:

1. Possessing the qualification for enterprise as legal person, owning import-export operations rights or foreign economic cooperation operation qualification, and the Customs statistics volume of exports of the last year is US\$15,000,000 or [less];
2. Having not committed any offenses in the aspects of foreign business and economic operational control, financial management, tax administration, foreign exchange control, and custom supervision in the last two years; and
3. Possessing professionals who specialize in international market developing, having definite work arrangement and market development plans for developing international markets.

**Article 13** Project organizing units meeting the following requirements may apply for the organization projects:

1. The organized activities are for the purpose of helping the small- and medium-sized enterprises open up international markets and of improving the international competition capabilities of small and medium-sized enterprises;
2. There are 10 or more enterprises taking part in the activities, and more than 70 per cent of the enterprises meeting the application requirements for small- and medium-sized enterprises provided in Article 12 of these Detailed Rules for Implementation; and
3. The funds applied for directly benefit the enterprises taking part in the activities, so as to reduce the expenses and the risks of market development of those enterprises, and to increase the enterprise's efficiency.

**Article 14** Enterprises taking part in the organization projects may not apply for the market pioneering funds for the same project separately.

### **Chapter 5: Administration of and Standards for the Use of Funds**

**Article 15** The market developing funds arranged by the central treasury are divided into two parts, one for central use and the other for local use. The funds directly used by the central authorities shall occupy 30 per cent of the fund plan of that year, and the funds used by localities shall occupy 70 per cent of the fund plan of that year.

**Article 16** In principle, the support proportion of market developing funds shall not exceed 50 per cent of the amount the supported project needs. For small- and medium-sized enterprises of the western regions, and for the market developing activities carried out in accordance with the strategy of market diversity listed in paragraph 1, Article 10 of these Detailed Rules for Implementation, the support proportion of funds may be raised to 70 per cent.

**Article 17** Expenses paid in foreign currencies shall be converted into Renminbi (RMB) according to the foreign exchange quotation promulgated by China People's Bank of the day on which the expense voucher is issued.

### **Chapter 6: Administration of the Project Fund Plan**

**Article 18** The Ministry of Foreign Trade and Economic Cooperation and the Ministry of Finance shall jointly negotiate with each other and decide about the fund quota of the part for central use and the part for local use of next year according to the arrangements of the annual market developing fund plan.

The Ministry of Foreign Trade and Economic Cooperation and the Ministry of Finance shall make the fund quota for local use known to the local foreign trade and economic departments and financial departments before July 1 of each year.

**Article 19** The Ministry of Foreign Trade and Economic Cooperation and the local foreign trade and economic departments are responsible for proposing the annual project fund plan of the part for central use and the part for local use of the next year. The contents of the project fund plan shall include: specific projects, support contents, support proportion and support amount, etc.

**Article 20** The project fund plan of the part for local use shall be reported to the Ministry of Foreign Trade and Economic Cooperation before August 15 of each year by the local foreign trade and economic departments after being examined by the financial departments of the same level.

The Ministry of Foreign Trade and Economic Cooperation is responsible for proposing the national project fund plan of the market pioneering funds of the next year, and shall report the plan to the Ministry of Finance before September 10 of each year.

**Article 21** The Ministry of Finance shall give a written reply concerning the national project fund plan of market developing funds of the next year to the Ministry of Foreign Trade and Economic Cooperation before October 10 of each year.

The Ministry of Finance and the Ministry of Foreign Trade and Economic Cooperation shall jointly make the project fund plan of the next year known to the local financial departments and foreign trade and economic departments before November 1 of each year according to the annual project fund plan.

**Article 22** The projects that may be listed in the project fund plan for central use shall include:

1. Organization projects proposed by the project organizing units which organize the small- and medium-sized enterprises of the whole country or of different regions to open up international markets;
2. Organization projects proposed by the central enterprises which organize the small- and medium-sized enterprises to pioneer the international markets; and
3. Enterprise projects proposed by the central enterprises that comply with the provisions of Article 12 of these Detail[ed] Rules of Implementation or by the subsidiary companies of the central enterprises that have made industrial and commercial registration in Beijing.

**Article 23** Projects that may be listed in the annual project fund plan for local use shall include:

1. Organization projects proposed by project organizing units that organize the local small-and medium-sized enterprises to open up the international markets;
2. Enterprise projects proposed by the small-and medium-sized enterprises that have made industrial and commercial registration in that region and that comply with the provisions of Article 12 of these Detailed Rules of Implementation; and
3. Enterprise projects proposed by the subsidiary companies of central enterprises that have made industrial and commercial registration in that region and that comply with the provisions of Article 12 of these Detailed Rules of Implementation.

**Article 24** The Ministry of Finance and the Ministry of Foreign Trade and Economic Cooperation may make appropriate adjustment to the project fund plan of this year that have been made known to the lower levels in the executing year according to the use status and use effect of the market developing funds.

**Article 25** The Ministry of Finance shall appropriate the funds according to the annual project fund plan made known to the lower levels. Among which, the funds distributed for local use shall be appropriated to the local financial departments once for all or by time; the market developing funds used by central budget administrative units shall be appropriated directly by the Ministry of Finance; and the other market developing funds for central use shall be appropriated to the Ministry of Foreign Trade and Economic Cooperation every three months according to the annual project fund plan.

## **Chapter 7: Application Procedures**

**Article 26** Application for project fund plan. Small- and medium-sized enterprises or project organizing units that meet the requirements for application of Article 12, Article 13 of these Detailed Rules for Implementation may apply to the Small- and Medium-Sized Enterprise Office or the local foreign trade and economic departments for the project fund plan of the next year according to the support contents provided in these Detailed Rules for Implementation from July 1 to July 31 of each year.

**Article 27** Small -and medium-sized enterprises or project organizing units shall submit the basic information of the applying units, application report, the basic information of the project applied for (see attachment 2 for details), and shall attach the relevant material together when applying for the project fund plan.

**Article 28** The Ministry of Foreign Trade and Economic Cooperation shall make public announcements of the specific contents of the project fund plan after the Ministry of Finance and the Ministry of Foreign Trade and Economic Cooperation have given a written reply concerning the project fund plan of the next year. Small -and medium-sized enterprises and project organizing units shall make relevant preparations according to the project fund plan replied by the foreign trade and economic departments and the financial departments.

**Article 29** Application for project implementation. Small- and medium-sized enterprises or project organizing units shall, according to the annual project fund plan replied, apply to the Small-and Medium-Sized Enterprise Office or to the local foreign trade and economic departments for project implementation 30 days before the implementation of the projects starts.

**Article 30** Small- and medium-sized enterprises or project organizing units shall submit the application for project implementation, explanations of project implementation (see Attachment 3 for details), and shall attach the relevant material together when applying for project implementation.

**Article 31** The Ministry of Foreign Trade and Economic Cooperation or the local foreign trade and economic departments may directly examine and reply to the project implementation applications which are included in the annual project fund plan within 10 days, and send a copy to the financial departments at the same time.

**Article 32** The projects that apply for adjusting the contents of the project fund plan shall be reported to the Ministry of Foreign Trade and Economic Cooperation and the Ministry of Finance for examination and approval after the Small- and Medium-Sized Office or the local foreign trade and economic departments (financial departments) have given their initial opinions.

**Article 33** For the projects that can't be completed according to the project fund plan within the year, the small- and medium-sized enterprises or project organizing units shall apply to the Small-and Medium-Sized Enterprise Office or the local foreign trade and economic departments for project termination or project application postponement which shall be examined and approved by the foreign trade and economic departments.

**Article 34** In case of enterprise project application, the funds given to each project shall not be more than CNY300,000 at the most, in case of organization project application, the funds given to each project shall not be more than CNY3,000,000 at the most.

## **Chapter 8: Appropriation of the Funds**

**Article 35** The market developing funds adopt the principle of appropriation afterwards, namely the small- and medium-sized enterprises or project organizing units shall apply to the Small- and Medium-Sized Enterprise Office or the local foreign trade and economic departments for project appropriation within one month after the project is completed.

**Article 36** The following material shall be submitted when applying for the appropriation of project funds:

1. Application form of project fund appropriation of international market developing funds of small- and medium-sized enterprises (see Attachment 4 for details);
2. Project summing-up report of international market developing activities, the contents of which shall include: expenses, achievements obtained and the problems, etc.;
3. Legal vouchers (the copies) of the expenses actually occurred.

**Article 37** The market developing funds shall, through the financial departments at all levels, gradually carry out the treasury central payment according to the requirements of budget reform and treasury central payment.

**Article 38** The Small-and Medium-Sized Enterprise Office shall make an initial examination [of] the applications for the project fund appropriation of the part for central use according to the annual project fund plan, and shall report them to the Ministry of Foreign Trade and Economic Cooperation after gathering and arranging the projects each quarter (three months). Among which, the project funds of central budget administrative units shall be directly appropriated after being examined by the Ministry of Finance, and the project funds of other units shall be appropriated after being examined by the Ministry of Foreign Trade and Economic Cooperation.

**Article 39** Local foreign trade and economic departments shall review the applications for project fund appropriation for local use according to the annual project fund plan, and report them to the local financial departments for fund appropriation after gathering and arranging the projects each quarter, and the local financial departments shall appropriate funds to the project organizing units or small- and medium-sized enterprises after examination.

### **Chapter 9: Evaluation, Supervision and Inspection**

**Article 40** The Ministry of Finance and the Ministry of Foreign Trade and Economic Cooperation shall jointly supervise and inspect the market developing funds. The contents of inspection shall include: the examination and approval of the projects and the implementation, the use of project funds and the financial management. The forms of inspection [may follow] the whole process of the projects, giving selective examination to the relevant material or entrusting intermediary agencies to conduct auditing, etc.

**Article 41** The foreign trade and economic departments and financial departments shall establish [a] strict project examination and approval system and fund examination system, strengthen the inspection over projects and the evaluation of [the effect of fund use], so as to guarantee the directional use of the funds and make the best the use of the funds.

**Article 42** Local foreign trade and economic departments and financial departments shall summarize and analyze the use of the market developing funds each year, and shall report to the Ministry of Foreign Trade and Economic Cooperation and the Ministry of Finance before the end of March of the next year. Major projects (more than CNY1,000,000) shall be specially reported to the Ministries within 45 days after the projects are completed.

**Article 43** The small- and medium-sized enterprises or project organizing units that use the market developing funds shall keep the relevant original bills and vouchers in good condition for future reference according to the relevant financial provisions, and shall cooperate with and provide the relevant material to the foreign trade and economic departments and financial departments when the departments are making a special inspection.

### **Chapter 10: Rules for Punishment**

**Article 44** Any of the following acts is in violation of the provisions of the Measures for Administration and these Detailed Rules for Implementation:

1. Changing the [scope of use] without authorization against the principles of market developing fund use;
2. Withholding, misappropriating or embezzling the market developing funds;
3. Using the funds for personal welfare, reward and consumer expenses or using the funds to make up the shortage of administrative funds;
4. Repeatedly applying for the same project;
5. Obtaining the funds by using false material and vouchers;
6. The project organizing units directly use the market developing funds to improve their own profits and economic efficiency; and
7. Other acts that violate the Measures for Administration, these Detailed Rules for Implementation and relevant laws and regulations of the state.

**Article 45** For the small- and medium-sized enterprises or project organizing units that have committed any of the acts mentioned above, the financial departments shall recover the project funds that have already been obtained by the enterprises and the units; the foreign trade and economic departments shall cancel their qualification for application, and shall prohibit them from applying for using the market developing funds for five years.

**Article 46** For those that have seriously violated the Measures for Administration and these Detailed Rules for Implementation, the foreign trade and economic departments and financial departments shall give administrative punishment to the person in charge of that project and to the persons held directly responsible, if a crime is constituted, the departments shall submit it to the judicial departments, and the criminal responsibilities shall be investigated into according to law.

**Article 47** If the Small- and Medium-Sized Enterprise Office or any local undertaking unit hasn't earnestly performed its functions and duties according to the provisions, the foreign trade and economic departments and financial departments shall make a notice to criticize them, and shall cancel the undertaking qualification of those whose circumstances are serious.

### **Chapter 11: Supplementary Provisions**

**Article 48** Necessary funds may be arranged from the market developing funds for central use and those for local use at the rate of less than 3 per cent according to operation needs to pay the undertaking expenses and operation expenses to the undertaking units, consultat[ing] companies, evaluation companies, accounting firms and other intermediary agencies, so as to ensure the implementation of the evaluation, proving and auditing of the projects using the market developing funds, and to strengthen the supervision and administration of the project funds.

**Article 49** Local foreign trade and economic departments and financial departments may formulate the specific measures for implementation of the market developing funds of their own according to the requirements of the Measures for Administration and these Detailed Rules for Implementation and taking the actual circumstances into consideration.

**Article 50** The power to interpret these Detailed Rules for Implementation shall remain with the Ministry of Foreign Trade and Economic Cooperation jointly with the Ministry of Finance.

**Article 51** These Detailed Rules for Implementation shall come into force as of the date of promulgation.

Attachment:

1. Explanation of the contents supported by the international market developing funds of small- and medium-sized enterprises (omitted)
2. Application form of project fund plan of the international market developing funds of small- and medium-sized enterprises (omitted)
3. Application form of project implementation of the international market developing funds of small- and medium-sized enterprises (omitted)
4. Application form of project fund appropriation of the international market developing funds of small- and medium-sized enterprises (omitted)
5. List of the countries of Latin America, Africa, Middle East, East European and South-East Asia (omitted)
6. List of certification agencies (omitted)
7. List of central enterprises (omitted)

### 13. Circular on the Pilot Work Concerning the Examination and Approval of Overseas Investments (MOFCOM, April 2003)

Source: MOFCOM website. Retrieved from [http://www.fdi.gov.cn/pub/FDI\\_EN/Laws/law\\_en\\_info.jsp?docid=75516](http://www.fdi.gov.cn/pub/FDI_EN/Laws/law_en_info.jsp?docid=75516)

The foreign trade and economic cooperation commissions (departments or bureaus) of Beijing City, Tianjin City, Shanghai City, Jiangsu Province, Zhejiang Province, Ningbo City, Fujian Province, Xiamen City, Shandong Province, Qingdao City, Guangdong Province and Shenzhen City,

In order to accelerate the "Going Global" strategy and encourage the relatively advantageous enterprises of various type of ownership to make investments abroad, this Ministry has carried out a pilot reform, namely decentralizing the power to examine and approve outbound investments and streamlining the outbound investment examination and approval formalities in Beijing City, Tianjin City, Shanghai City, Jiangsu Province, Shandong Province, Zhejiang Province, Guangdong Province, Fujian Province, Qingdao City, Ningbo City, Shenzhen City and Xiamen City. In order to do the pilot work well, find the problems and summarize the experience in time, you are hereby notified of the items as follows:

1. In accordance with the requirements of pilot documents, the foreign trade and economic cooperation administrative department of each pilot province or city (hereinafter referred to as the "local administrative department") shall do the examination and approval, archival filing and statistical work involving the overseas enterprises in an earnest manner. With the approval from a local administrative department of setting up an overseas enterprise (institution), an Archival Filing Form of Overseas Enterprises (Institutions) Applying for an Approval Certificate (for [an example], see the Annex) shall be filled out and an official seal shall be affixed to it. An approval certificate shall be [obtained] by the applicant from (the Cooperation Department of) this Ministry upon the strength of the Archival Filing Form and the reply of the local administrative department. After the online certificate issuance conditions are mature, the approval certificates shall be issued by the local administrative department on behalf of this Ministry.
2. For the purpose of keeping updated of the new situations happening in the outbound investments of China, when an applicant makes an application for an approval document for merger, procuring (exchanging) shares, getting listed abroad, setting up an investment and holding enterprise or institution abroad, or setting up a development zone or research centre abroad, besides an archival filing form and the reply of the local administrative department, it shall report to this Ministry a complete set of application materials which it reports to the local foreign trade and economic cooperation administrative department.
3. In the reply to an enterprise, a local administrative department shall make a clear requirement for the enterprise to register in the economic and commercial office of the Chinese embassy or consulate based abroad, participate in the joint annual inspection on overseas investments in time and carry out the foreign exchange register formalities in time. Any equity of any overseas enterprise may not be possessed in the name of an individual. Under any special situation, if actually necessary to hold such equity in the name of an individual, the entrusted agreement shall be reached by notary at home and abroad in accordance with the related provisions.
4. Any local administrative department may not grant the power of examining and approving overseas investments to any inferior entity without permission of this Ministry.
5. All pilot entities shall make a brief summary on the pilot work by the end of each quarter and give a report concerning the problems, opinions or suggestions on the pilot work to (the Cooperation Department of) this Ministry in time.

#### **14. Circular of Ministry of Commerce and Ministry of Foreign Affairs of Distributing Guide Catalogue of Countries and Industries for Investment Abroad (MOFCOM & MFA, July 2004)**

Source: Chinese Ministry of Commerce website. Retrieved from <http://english.mofcom.gov.cn/aarticle/policyrelease/domesticpolicy/200407/20040700252775.html>

For the purposes of acting in the spirit of 16th Congress and Third Plenary Session of the Fourteenth Central Committee of the Party, stepping up the strategy of ["Going Global,"] the Ministry of Commerce and Ministry of Foreign Affairs jointly formulated a Guide Catalogue of Countries and Industries for Investment abroad in accordance with related instructions of the State Council.

The two ministries call for all departments concerned to give high priority to investment abroad, encourage, support and guide the enterprises to make good use of both [the] domestic [and overseas] markets, push forward the development of goods, techniques and services in China. All departments concerned should improve the administration of investment abroad, prevent the blind investment abroad and competition among domestic enterprises.

Guide Catalogue of Countries and Industries for Investment Abroad is an important ground for the departments responsible for foreign cooperation to guide and approve the investment abroad of Chinese enterprises. The enterprises that meet with the Guide Catalogue and have the certificates of investment abroad have priority to enjoy preferential policies in funds, foreign exchange, tax, customs, exit and entry.

MOC and MFA will distribute the Catalogue in several parts, renew, adjust and replenish the Catalogue in time in accordance with the state policies of investment abroad and the development of the investment environment in foreign countries.

(All information published in this website is authentic in Chinese. English is provided for reference only.)

#### **15. "Enhance International Cooperation and Promote Common Development." Government Speech at MOFCOM's First International Forum on "Going Global" (MOFCOM, June 2004)**

Source: MOFCOM website. Retrieved from <http://english.mofcom.gov.cn/aarticle/translators-garden/famous-speech/200803/20080305440291.html>

Distinguished Mr. Eleih-Elle-Etian, Chief of African Nation Delegation,

Distinguished Mr. Serge Janssens de Varebeke, Chairman of the EU Chamber of Commerce,

Dear Guests,

Ladies and Gentlemen,

This is the first time that the Ministry of Commerce of China [has held] such an international forum on [the] "Go Global" [policy]. Yesterday, Vice Premier Wu Yi sent her congratulatory letter to the forum, showing the attention and good wishes of China's central government. Entrusted by Minister Bo Xilai and on behalf of the Ministry of Commerce of China, I would like to hereby extend my warm welcome to distinguished guests from home and abroad, and friends of all circles, and my sincere thanks to countries as well as people from both academic and business circles for their support and participation.

Peace and development are the two major themes of today's world. As economic globalization goes deeper, countries all over the world are getting closer and closer. According to an ancient Chinese saying, sometimes a foot may prove short while an inch may prove long. Every country or region has its own comparative advantages



and favourable conditions. It is a shared wish of all countries and regions as well as their necessary choice for seeking opportunities and facing challenges to enhance international economic exchanges and cooperation, so as to combine favourable conditions, draw upon each other's strengths and achieve common development.

Opening up to the outside world is a basic national policy of China to push forward its modernization drive. After over two decades [of] effort, China has established a basic pattern for its all-directional opening up, and achieved rapid development of its open economy. In 2003, China's aggregate economic volume reached US\$1,400 billion, with a GDP per capita of US\$1090, and the total trade volume stood at US\$851.2 billion, ranking China the fourth in the world. From 2001 to 2003, China's aggregate trade volume was nearly US\$1 trillion. Since 1993, China has been the largest foreign direct investment recipient for 11 consecutive years, and the total volume of paid-in FDI had reached US\$501.5 billion by the end of 2003. As China's foreign trade and foreign investment attraction develop rapidly, China's market capacity also grows at a high speed, which not only promotes China's economic and social development, but also contributes to [an increase in] trade and investment worldwide as well as the development of other countries and regions in the world. China's experience has proven that the Chinese economy cannot develop without the world, nor can economic globalization and the development of the world economy be achieved without China.

China's accession to the WTO ushered in a new development stage for its opening up. In the new century, the Chinese government has clearly stated that it will adhere to combining "bring in" with "go global," comprehensively upgrading its opening up, and participating in international cooperation and competition at a larger extent, in more areas and on a higher level. The Chinese government will, on the one hand, strive to improve the quality and level of "bring in," and on the other hand encourage Chinese companies with comparative advantages to go global in a more active manner and enhance their international competitiveness. China's accumulative overseas direct investment has so far exceeded US\$30 billion, involving over 160 countries and regions. China's foreign contractual engineering and labour service cooperation has also witnessed steady growth. Oversea[s] investment through such forms as overseas resource development and processing trade, agricultural cooperation, and the establishment of R&D centers has made sound progress, which helps to improve the strength and business operation levels of Chinese companies. It is fair to say that in order to adapt itself to economic globalization and further its opening up, China must necessarily encourage competent Chinese companies to go global.

Ladies and Gentlemen,

After over two decades' going global and conducting economic cooperation with other countries and regions, Chinese companies have improved their competence and accumulated experience in "Going Global." Some companies have primarily established their own global production and marketing networks, and acquired some rudiments of a multinational corporation. A modern corporate system has been basically established; many companies have developed into big companies or groups with well-known brands, self-owned intellectual property, well-established main business and relatively strong core competitiveness. Some small- and medium-sized companies have also started to make a [name for themselves] in the international market. Chinese companies have diversified their business operation modes and upgraded their management levels. Forms of overseas direct investment have increased to include international merger[s] and acquisition[s], equity swap[s], purchase of marketing network[s], license[s] and technological patent[s], and the establishment of R&D centres and industrial parks. Meanwhile, there are more large foreign contractual engineering projects with higher quality and technical content. EPC general contracting is now the main form of foreign contracting, which is gradually developing towards higher level forms such as BOT.

Through various forms of outward investment cooperation, China has strengthened its economic and trade cooperation with other countries and regions in the world, contributed positively to their respective economic and social development, and promoted common development through drawing upon each other's strengths. Chinese

companies have not only undertaken many good quality, large-scale cooperative projects with high technical content, but also created more jobs and revenues for relevant countries or regions, introduced equipment and technology that fit their respective economic development levels, and trained technicians. These efforts have generated [a great deal of] influence and won [a] good reputation for Chinese companies.

The world economy has started its gradual recovery from over two years' sluggishness. International direct investment has ended its downward trend and become stabilized. All these indicate a fast recovery of the world economy. In 2003, the economic growth of both the U.S. and Japan was better than expected. Economic situations in the Euro zone are relatively stable. Developing countries and regions have embarked on a strong momentum of economic development. Some countries in transition have newly outstood themselves in terms of economic growth. Major organizations in the world have made upward adjustments to their 2004 forecasts of the world economic growth. Global economic growth rate is expected to reach 4.6 per cent according to the IMF.

In the meantime, economic cooperation worldwide is developing robustly while enthusiasm for making multilateral and bilateral investment agreements is rising. The investment climate is being improved, investment facilitation is being expedited, global direct investment is expected to rebound and world trade growth driven by cross-border direct investment will be accelerated. Increased world investment and trade will further consolidate the momentum of world economic recovery. Developing countries are facing precious opportunities for sharpening their competitive edge through worldwide industrial restructuring and adjustment of international division of labour. China is currently at the stage of building a well-off society in an all-around way and enjoys huge market and great potential for growth. Therefore, because of either the development trend of the international economy or the actual need of [the] developing Chinese economy, there exists tremendous space and potential as well as broad prospects for international economic cooperation.

At the same time, we have also noted that there are many uncertainties in the current world. Problems of regional security and terrorism have hurt peoples' confidence in economic growth. Risks of volatility are seen in financial and foreign exchange markets. Trade protectionism caused by politicization of economic issues rises from time to time. The basis for world economic recovery remains vulnerable. Meanwhile, China is facing [the] tough task of restructuring its internal economy and has the outstanding problem of uneven economic development among regions. China is still a developing country. Only a small number of Chinese companies are able to "Go global." Many companies lack experiences of international economic cooperation and need to improve relevant management and service systems. So it will not be [smooth] sailing for Chinese companies to go global. They must be prudent to deal with all kinds of risks and challenges.

Ladies and gentlemen,

Accelerating the "Go Global" strategy is an important strategic decision made by China to expand its opening up and take initiatives to participate in international economic development. In line with the overall strategic planning of Chinese economic development and based on the trend [of] and need [for] internal and external economic development, Chinese companies' efforts of "Going Global" in the next period lie in the following aspects.

First, gradually increasing outward investment and developing overseas processing trade and overseas assembling trade. While strengthening investment cooperation with the rest of the world, particularly developing countries and regions, we should also try every means to create jobs locally and enhance the self-development capability of local economies.

Second, intensifying overseas cooperation in resource development. Through cooperating with other countries to prospect, exploit and develop resources such as oil and gas, minerals, forestry, fishing and economic plants, China can transfer its applicable technologies of resource development, create jobs, increase household income and fiscal revenue and strengthen self-development and export capability of local economies so as to help those countries transform their resource advantage to development advantage.

Third, contracting overseas engineering projects. Companies are encouraged to undertake project contracting and design and consulting business by providing financing. Domestic companies are supported to participate in projects in every country and region. It is aimed [at building] up a number of sizeable and competitive engineering companies.

The fourth aspect is to carry out overseas agricultural cooperation. The advantage of Chinese agricultural technology and equipment should be fully utilized and capable companies are encouraged to carry out projects of comprehensive agricultural development. Multiple [approaches] should be taken to establish international agricultural production and processing bases.

The fifth aspect is to facilitate overseas science, technology and talent cooperation. Companies are guided to set up R&D centres in regions endowed with intensive science and technology. They should intensify international technical exchange and cooperation and improve their innovative capability and technology.

The sixth aspect is to elevate the level of foreign-related labour service cooperation. According to the demands of international market, Chinese companies should diversify their approaches and expand the scope of labour service cooperation while progressively perfect management system.

The seventh aspect is to promote cooperation in the field of trade in services. Chinese companies are encouraged to go abroad and engage themselves in trade, distribution, banking, insurance, securities, futures, fund management, telecommunication and information, logistics and shipping, and intermediary services. They are expected to intensify international exchange in service trade in order to facilitate international trade and investment.

In order to mobilize companies to engage more keenly in various forms of investment cooperation with other countries and regions across the world, the Chinese government is stepping up the establishment of a service and management system for foreign economic cooperation under the premise of taking market as the guiding force, businesses as the mainstay and government as the service provider.

First, China is currently making improvements to the socialist market economic system. It is observing the requirements of the market economy and fulfilling its obligations as a WTO member, thus giving rise to a foreign-related economic management system that is stable and transparent, as well as creating a legal environment [that is] fair and predictable. This has provided a sound systematic guarantee for Chinese companies to regulate their foreign economic cooperation activities together with their foreign counterparts. As you might be aware, quite recently the National People's Congress of China has endorsed the newly revised Foreign Trade Law of the People's Republic of China, which will come into force on July 1st. This is a basic law bearing on foreign trade and economic cooperation against the backdrop of China's economic development and its WTO accession. It also constitutes the infrastructure whereon to build China's administrative system for foreign economic cooperation and realize law-based administration by the government in the economic and trade sectors. Starting with this basis, there is a need to institute a series of supporting methods, measures and rules.

Second, set up a new kind of service and management system for foreign economic cooperation.

By drawing on international practices, we are formulating and improving those policies and measures in the areas of banking, insurance, foreign exchange, customs, inspection and quarantine so as to facilitate foreign economic cooperation. We have further [reduced] government's role of administrative examination and approval in foreign cooperation activities by the businesses, further decentralized the authority to examine and approve overseas investment, simplified the approval procedures and practiced online application and online issuance of the certificates in a progressive manner. We are also building on the existing monitoring mechanism for foreign economic cooperation to install and improve the relevant systems of annual inspection and data collection, in an effort to make China's transnational companies more developed and stronger.

We are also strengthening the government's role in providing information services by improving the business information system for foreign economic cooperation, setting up the information database and building a platform for information exchanges. We continue to build on the "China Guide for Overseas Investment and Cooperation" that is already in operation so that domestic and international resources in investment promotion can be shared in an extensive way. By offering information on policies, market and projects to the public, the Chinese government can help its businesses [understand] more about the international market and assist foreign businesses in [becoming familiar with] China and Chinese companies. On this basis, the interaction between Chinese and foreign companies is strengthened and the areas and modalities of economic cooperation is constantly expanded.

The role of the government shall be enhanced in encouraging and guiding endeavours to promote foreign economic cooperation. High-level visits of government leaders shall be taken good advantage of to facilitate successful transaction of large cooperation projects. Moreover, we should give full play to China International Fair for Trade and Investment, up to now China's largest platform for discussing investment and trade opportunities by consolidating its function as a business fair and extending its coverage, so that Chinese and foreign business participants can be benefited both physically and theoretically. On behalf of MOFCOM, I would like to take this opportunity to extend my welcome to interested Chinese and foreign agencies and companies to attend CIFIT, which will be held in September in Xiamen. I am convinced you will find the visit fruitful.

Third, in line with the market economic rules and requirements, we will help intermediary agencies in foreign economic cooperation to precisely position themselves and improve their function. Their administrative mandate should be further weakened while that of service and self-discipline be strengthened to function as a bridge between the government and the business circle. Meanwhile intermediary agencies are encouraged to enhance their communication and cooperation with their international counterparts, improve their capacity and quality of service.

Fourth, creating a good international environment for the cooperation between Chinese and foreign businesses. Going with the development trend of economic globalization and regional economic cooperation, China will vigorously take part in negotiations on multilateral investment frameworks and regional economic cooperation, conduct in-depth study on features of different regional economic organizations and accelerate the process of signing free trade agreements. At the same time, efforts will also be made to consolidate the consultation mechanism of foreign economic cooperation under the framework of bilateral economic and trade cooperation, keep close contact with embassies and agencies of foreign countries in China, and actively engage in signing bilateral government agreements on economic cooperation. Hopefully frequent multilateral and bilateral exchanges and consultations will lead to fewer barriers for business cooperation and greater facilitation of international economic cooperation.

Ladies and gentlemen,

Driven by the trend of economic globalization and regional economic cooperation, China is having closer and stronger economic and trade exchanges with the rest of the world. In the past two years after its WTO accession, China is earnestly implementing its WTO commitments, dedicating to a more open, fairer and more transparent investment environment in order to attract more FDI. Meanwhile, China is also gradually improving its mechanism for servicing and promoting China's "Going Global" efforts, enhancing the facilitation of overseas investment cooperation to create a good external environment for investment cooperation between Chinese and foreign businesses. China marching toward the world will bring with her more opportunities and vitality while cooperation among all countries and regions in the world will produce more happiness and prosperity.

Against this backdrop, today's Forum is of positive significance. It serves as a platform for exchanges and communication between Chinese and foreign governments, agencies and businesses, on which participants can hold high-level, sophisticated discussions on investment policies and measures, investment environment,

experiences in internationalized operation and so on. This is a valuable opportunity for Chinese and international companies to consolidate international investment cooperation, and explore new modes and areas of cooperation.

I hope distinguished guests and all other participants can feel free to air your opinions so that all will feel enlightened or horizon broadened. I do hope you will take good advantage of this Forum to intensify mutual exchanges and mutual trust, learn from each other, make up each other's weak points with each other's strong points amidst competition, tap the potential of each party in cooperation in order to achieve win-win outcomes and common development by seeking for common ground while putting aside differences.

Finally, I wish the Forum a complete success. Thank you.

## **16. Verification and Approval Procedures for OFDI/Interim Measures for the Administration of Examination and Approval of the Overseas Investment Projects (NDRC, October 2004)**

Source: MOFCOM website. Retrieved from [http://www.fdi.gov.cn/pub/FDI\\_EN/Laws/GeneralLawsandRegulations/MinisterialRulings/P020060620326602659507.pdf](http://www.fdi.gov.cn/pub/FDI_EN/Laws/GeneralLawsandRegulations/MinisterialRulings/P020060620326602659507.pdf)

*Note by the editors: An alternative translation of this document is available from Chinalawinfo under the title "Tentative Administration Rules on Approval of Offshore Investment Projects."*

*The Interim Measures for the Administration of Examination and Approval of Overseas Investment Projects, which have been deliberated and adopted at the executive meeting of the director of the National Development and Reform Commission, are hereby promulgated and shall go into effect as of the date of promulgation.*

Ma Kai, Director of the National Development and Reform Commission, October 9, 2004

### **The Interim Measures for the Administration of Examination and Approval of the Overseas Investment Projects**

#### **Chapter 1: General Provisions**

**Article 1** With the view of regulating the administration of the examination and approval of overseas investment projects, the present Measures are formulated in accordance with the *Administrative License Law of the People's Republic of China* and the *Decision of the State Council on Reforming the Investment System*.

**Article 2** The present Measures shall be applicable to the examination and approval of overseas investment projects (including new establishment, merger by purchase, purchase of stocks, increase in capital and reinvestment) of all kinds of juridical persons within the territory of the People's Republic of China (hereinafter referred to as "investors") and enterprises or organs overseas held by them.

The present Measures shall be applicable to the examination and approval of the investors' investment projects in Hong Kong and Macao Special Administrative Regions and in Taiwan.

**Article 3** The "overseas investment projects" referred to in the present Measures are those activities through which the investors activate to obtain the overseas ownership, power of operation and management and other related rights and interests by pouring assets and rights and interests such as the money, securities, material objects, intellectual property or technology, stock rights, creditor's rights and etc. or by offering the security.

## **Chapter 2: Organs of Examination and Approval and The Purview of Their Authorities**

**Article 4** The overseas investment projects of resource development and overseas investment projects using large amount of foreign exchange shall be subject to the examination and approval of the State.

“Projects of resource development” refer to the projects invested overseas to prospect for such resources as crude oil and mines. Among them, projects with the Chinese party’s investment amount of US\$30 million or more shall be subject to the examination and approval of the National Development and Reform Commission; projects with the Chinese party’s investment amount of US\$200 million or more shall be subject to auditing by the National Development and Reform Commission and then be reported to the State Council for examination and approval.

“Projects using large amount of foreign exchange” refer to the overseas investment projects with the Chinese party’s foreign exchange amount of US\$10 million or more beyond the fields prescribed in the preceding paragraph. This kind of project shall also be subject to the examination and approval of the National Development and Reform Commission. Projects with the Chinese party’s investment amount of US\$50 million or more shall be subject to the examination of the National Development and Reform Commission and then be reported to the State Council for examination and approval.

**Article 5** Projects of resource development, with the Chinese party’s investment amount of US\$30 million or less and other projects using foreign exchange of US\$10 million or less by the Chinese party, shall be subject to the examination and approval of the provincial development and reform departments of all provinces, autonomous regions, municipalities directly under the Central Government, the cities under separate state planning and XinJiang Production and Construction Corp. and the power to examine and approve the projects shall not be transferred to lower-level departments. For the purpose of immediately mastering the information of the examination and approval of the projects, all provincial development and reform departments shall submit a copy of the documents of the examination and approval of the projects to the National Development and Reform Commission within 20 working days counted from the date of examination and approval.

Where the local governments have otherwise prescribed for the examination and approval of the projects listed in the preceding paragraph, such prescriptions shall prevail.

**Article 6** For overseas investment projects of resource development with the Chinese party’s investment amount of US\$30 million or less invested by the enterprises under the administration of the Central Government and other overseas investment projects with the Chinese party’s foreign exchange of US\$10 million or less, decisions shall be made by the enterprises independently and then pertinent documents shall be reported after decision making to the National Development and Reform Commission for the [purpose of] record keeping. The National Development and Reform Commission shall issue the record-keeping certificate within 7 working days after acceptance of the record-keeping materials mentioned above.

**Article 7** Investment projects in Taiwan and countries without any diplomatic relations with China shall, no matter what the amount is, be subject to the examination and approval of the National Development and Reform Commission or be reported to the State Council for approval after being examined and approved by the National Development and Reform Commission.

## **Chapter 3: Procedures of Examination and Approval**

**Article 8** Where the power to examine and approve the projects remains with the National Development and Reform Commission or the State Council, the investors shall put forward the project application reports to the provincial development and reform department at the locality of registration. The provincial development and reform department at the locality of registration shall submit it to the National Development and Reform Commission after examining and approving it.

The enterprise groups of the cities under separate state planning and the enterprises under the administration of the Central Government may directly submit the project application reports to the National Development and Reform Commission.

**Article 9** The National Development and Reform Commission shall solicit the opinions of the departments concerned before examining and approving the investment projects in Hong Kong and Macao Special Administrative Regions, Taiwan Province and countries and sensitive areas without any diplomatic relations with China. The departments concerned shall put forward the written suggestions to the National Development and Reform Commission within 7 working days after acceptance of the materials mentioned above.

**Article 10** The National Development and Reform Commission shall entrust qualified consultation organizations to assess the key issues that are necessary to be evaluated and demonstrated within 5 working days after acceptance of the application report. The entrusted consultation organizations shall put forward the appraisal report to the National Development and Reform Commission within the prescribed time limit.

**Article 11** The National Development and Reform Commission shall, within 20 working days after the acceptance of the project application report, finish examining and approving the project application report or put forward the opinions on the examination and approval to the State Council. Where it is difficult to make the decision on the examination and approval or put forward opinions on the examination and approval within 20 working days, the period shall be extended for 10 working days with the approval of the principal of the National Development and Reform Commission and the project applicant shall be notified of the reasons for the extension.

The period specified in the preceding paragraph does not include the period for assessment conducted by the entrusted consultation organization.

**Article 12** For approved projects, the National Development and Reform Commission shall issue the examination and approval documents in written form to the project applicants. For disapproved projects, the National Development and Reform Commission shall notify the project applicants of the reasons and the rights to apply for an administrative review or to initiate an administrative lawsuit in written form.

**Article 13** For projects of competitive bidding overseas or purchase, the written information report shall be submitted to the National Development and Reform Commission before the competitive bidding or the formal proceeding of business activities. The National Development and Reform Commission shall issue the related confirmation letters within 7 working days after acceptance of the written information report. The information report shall mainly include:

- (1) the fundamental information of the investors;
- (2) the background particulars of the investment project;
- (3) the sites and the orientation of investment, the predicted investment scale and construction scale; and
- (4) the schedule of working hours.

**Article 14** Where the investors need [to provide] the necessary first-phase project expenses including the use of foreign exchange (including the deposit for the performance of contract and the letter of guarantee), they shall apply to the National Development and Reform Commission for examination and approval. The approved first-phase expenses shall be calculated into the total investment amount of the projects.

**Article 15** In case the approved projects [fall] under any of the following circumstances, the investors shall apply to the National Development and Reform Commission for alteration:

- (1) the alteration of the construction scale, the main construction items and main products;
- (2) the alteration of the construction sites;
- (3) the alteration of the investors or their stock rights; or
- (4) The Chinese party's investment exceeds 20 per cent or more of the originally approved amount of the Chinese party's investment.

The procedures for examining and approving the alteration shall be implemented according to the related prescriptions of the present chapter.

#### **Chapter 4: Project Application Report**

**Article 16** Project application reports submitted to the National Development and Reform Commission shall contain the following items:

- (1) the name of the project and the fundamental information of the investors;
- (2) the particulars of the project background and the investment environment;
- (3) the construction scale of the project, the main construction items, products, target markets, and the particulars of benefits and risks of the project;
- (4) the total investment amount of the project, the amount of contribution of each party, the mode of contribution, the financing schemes and the amount of foreign exchange; and
- (5) for the merger projects by purchase or the projects of purchasing shares, the specific conditions of the companies to be merged or whose shares are to be purchased shall be illuminated.

**Article 17** The project application reports submitted to the National Development and Reform Commission shall be attached with documents as follows:

- (1) the resolution of the board of directors of the company or the pertinent resolutions of contribution;
- (2) the documents which can demonstrate the conditions of the assets, the management and the credibility of the Chinese party and the foreign cooperators;
- (3) the letter of intent for financing issued by banks;
- (4) where the contribution is offered in forms of assets and rights and interests such as securities, material objects, intellectual property or technology, stock rights and creditor's rights, the amount of contribution shall be checked and ratified according to the assessed value and the fair value of the rights and interests of the assets. The evaluation report of assets, which is issued by such intermediary institutions as the accountants and the assets appraisal institutions with the corresponding qualification, and the document from the third party, which can demonstrate the value of the related assets and rights and interests, shall be submitted;
- (5) for competitive bidding projects, merger projects by purchase or venture joint and cooperative projects, the letters of intent or the documents of the framework agreement signed by the Chinese party and foreign party shall be submitted; and



(6) for overseas competitive bidding projects or overseas merger projects by purchase, the information report, with the attachment of the pertinent confirmation letters of the National Development and Reform Commission, shall be submitted pursuant to Article 13 of the present Measures.

## **Chapter 5: The Conditions and Validity of Examination and Approval**

**Article 18** The requirements for the project that shall be examined and approved by the National Development and Reform Commission are as follows:

- (1) It shall abide by the laws and regulations of the state and the industrial policies, not do harm to the sovereignty, safety and public interests of the state and not violate the rules of international laws;
- (2) It shall comply with the demands of sustainable development of the economy and society and be helpful to the development of strategic resources required for developing the national economy; and comply with the requirements of the State for adjusting the industrial structure; it shall promote the export of the technology, products, equipment and labour services with the comparative predominance and absorb the advanced foreign technology;
- (3) It shall comply with the administrative prescriptions of national capital projects and the foreign loans; and
- (4) The investors shall possess the corresponding investment strength.

**Article 19** The investors shall, pursuant to the examination and approval documents of the National Development and Reform Commission, handle the pertinent formalities of foreign exchange, customs, entry and exit administration and tax revenue according to law. The enterprises under the administration of the Central Government prescribed in Article 6 of the present Measures shall handle the pertinent formalities mentioned above on the strength of the record-keeping certificates issued by the National Development and Reform Commission.

**Article 20** Before signing any documents of final legal binding force for the overseas investment projects, the investors shall obtain the examination and approval documents or record-keeping certificates issued by the National Development and Reform Commission.

**Article 21** The validity period shall be stipulated in examination and approval documents issued by the National Development and Reform Commission. Within the validity period, the examination and approval documents shall be the basis for the investors to go through corresponding formalities prescribed in Article 19 of the present Measures. After the validity period, the investors shall simultaneously present the documents for permitting the extension issued by the National Development and Reform Commission when they go through the pertinent formalities mentioned above.

**Article 22** For overseas investment projects not approved by authoritative institutions and not put on record[], no departments of foreign exchange management, customs or taxation may handle the pertinent procedures.

**Article 23** Where the investors obtain the approval documents or record-keeping certificates by such malfeasant means as providing false materials, the National Development and Reform Commission may repeal the approval documents or record-keeping certificates of the projects.

**Article 24** The National Development and Reform Commission may conduct supervision and check on the implementation particulars of investors' projects and on the particulars of examination and approval of the overseas investment projects by the provincial development and reform departments and deal with the problems found through supervision and check according to law.

## Chapter 6: Supplementary Provisions

**Article 25** All provincial development and reform departments shall, pursuant to the prescriptions of the present Measures, enact corresponding measures for the administration of examination and approval.

**Article 26** The examination and approval of projects invested overseas by natural persons and other institutions shall be implemented referring to the present Measures.

**Article 27** The power to interpret the present Measures shall remain with the National Development and Reform Commission.

**Article 28** The present Measures shall come into force as of October 9, 2004. Where the former rules of examination and approval of the overseas investment projects are contrary to the present Measures, the present Measures shall prevail.

### **17. Notice of the National Development and Reform Commission, the Export-Import Bank of China on Giving Credit Support to the Key Overseas Investment Projects Encouraged by the State/Circular on Supportive Credit Policy on Key Overseas Investment Project Encouraged by the State (NDRC & China ExIm Bank, October 2004)**

Retrieved from <http://www.lawinfochina.com/display.aspx?lib=law&id=3765>; [http://209.200.107.14/english/law2\\_disp.asp?sublawcode=SUB4885447119161114&lawcode=LAW486112671113915&country=China](http://209.200.107.14/english/law2_disp.asp?sublawcode=SUB4885447119161114&lawcode=LAW486112671113915&country=China)

*Notice of the National Development and Reform Commission, the Export-Import Bank of China on Giving Credit Support to the Key Overseas Investment Projects Encouraged by the State*

(No. 2345 [2004] of the Foreign Investment Dept. of the NDRC)

The people's governments of all provinces, autonomous regions, municipalities directly under the Central Government, cities directly under State planning, capital cities at the deputy provincial level, Xinjiang Production and Construction Army Corps, all ministries and institutions directly under the State Council, [and] all enterprises under the management of the Central Government:

Since the issuance of the "Notice on the Relevant Issues concerning the Provision of Credit Support to Key Overseas Investment Projects Encouraged by the State" (No. 226 [2003] of the Foreign Investment Dept. of the SDRC) by the National Development and Reform Commission and the Export-Import Bank of China, domestic enterprises have been provided with credit support to invest outside China, and have been effectively encouraged and promoted to "go out." As a result, desirable achievements have been made. In accordance with the "Decision of the State Council on Reforming the Investment System" (No. 20 [2004] promulgated by the State Council) and the "Interim Administrative Measures for Ratification of Overseas Investment Projects" (Decree No. 21 of the SDRC), the relevant contents of Document No. 226 [2003] of the Foreign Investment Dept. of the SDRC need to be adjusted appropriately. We hereby give our notice as follows regarding relevant matters:

I. The National Development and Reform Commission and the Export-Import Bank of China will jointly set up a credit support mechanism for overseas investments. According to the development planning of the State on overseas investments, the Export-Import Bank of China shall, in each year's export credit plan, specially arrange for a certain scale of credit funds (hereinafter referred to "special loans for overseas investments") to support key overseas investment projects encouraged by the State. Preferential export credit interest rates as provided by the Export-Import Bank of China shall apply to the special loans for overseas investments.

II. The special loans for overseas investments shall be mainly used for supporting the following key overseas investment projects:

- (1) overseas resource development projects which can make up for the relative insufficiency of domestic resources;
- (2) overseas productive projects and infrastructure projects which can give impetus to the export of domestic technologies, products, equipment, and labor services, etc.;
- (3) overseas research and development centers which may utilize internationally advanced technologies, management experiences and professional talents;
- (4) overseas enterprise acquisition and merger projects which can improve the international competitiveness of enterprises, and accelerate exploration of international markets.

III. [A]pplication[s] for use of special loans for overseas investments shall be subject to [approval] in accordance with the “Decision of the State Council on Investment System Reform” and the “Interim Administrative Measures for Ratification of Overseas Investment Projects”[;] and the Export-Import Bank of China shall examine the conditions for granting loans to such projects by following the principle of independent examination and granting of loans.

IV. The procedures for applying for special loans for overseas investments are as follows:

- (1) An enterprise [registered as a legal person] inside the People’s Republic of China (hereinafter referred to “domestic investor”) shall, in accordance with these provisions, submit the project application report to the National Development and Reform Commission or the development and reform department at the provincial level, and submit copies to both the head office and the business branch office of the Export-Import Bank of China. Meanwhile, the domestic investor shall file an application for loans to the Export-Import Bank of China;
- (2) The Export-Import Bank of China shall issue a letter of opinions on the use of special loans for overseas investments regarding the project, which shall be considered [by] the National Development and Reform Commission or shall be referred to by the development and reform department at the provincial level when examining the project application report; and
- (3) The National Development and Reform Commission or the development and reform department at the provincial level shall examine the project, and submit a copy of the opinions from examination to the Export-Import Bank of China. After the project has been [approved], the Export-Import Bank of China shall . . . determine the conditions for granting [the] loans to the project.

With respect to a project with significant country-related risks, the domestic investor is required to make full use of the existing overseas investment insurance mechanism to go through relevant procedures for buying the insurance, and to actively avoid overseas investment risks.

V. The National Development and Reform Commission shall strengthen policy guidance and necessary coordination for the projects that meet the conditions for using special loans for overseas investments, and shall accelerate the [approval] of such projects. Meanwhile, the National Development and Reform Commission shall cause relevant entities to improve their overseas investment risk guarantee mechanisms, and to do a better job in overseas investment insurance.

VI. The Export-Import Bank of China shall accelerate its examination of special loans for overseas investments in accordance with relevant provisions, and provide the following conveniences in consideration of the specific situation:

- (1) Granting a certain amount of credit loans according to the enterprise's credit grade and the overseas investment project's economic benefits;
- (2) In the event of a project with minor risks, stable investment proceeds and optimistic benefits, considering . . . directly grant[ing] loans to the overseas project company, causing the domestic investor of the project to provide [a] guarantee and/or regarding the assets or other equity formed from the project as [a] mortgage;
- (3) In the event of some strategic projects whose term of investment is relatively long, appropriately extending the periods of loans in consideration of the actual situation.

VII. The Export-Import Bank of China will, for the projects under intended use of special loans for overseas investments, also provide project-related financial services including bidding guarantee[s], performance guarantee[s], prepayment guarantee[s], quality guarantee[s] and international settlement[s], etc., and also provide certain preferences in respect of counter guarantee or guarantee bond[s] in consideration of the situation [of] the domestic investor and the projects.

VIII. This Notice shall come into force on the date of its promulgation, and the interpretation of [it] shall be the responsibility of the National Development and Reform Commission and the Export-Import Bank of China. The Document No. 226 [2003] of the Foreign Investment Dept. of the SDRC, which was promulgated by the National Development and Reform Commission, shall be repealed as of the date when this Notice is promulgated.

### **18. Ministry of Commerce and China Export and Credit Insurance Corporation Circular on Promoting Development of Export Name Brands with Help of Export Credit Insurance (MOFCOM, China Export and Credit Insurance Corporation, June 2005)**

Source: MOFCOM website. Retrieved from <http://english.mofcom.gov.cn/aarticle/policyrelease/domesticpolicy/200507/20050700188210.html>

For the purpose of following the Party Central Committee and the State Council's spirit on promoting the development of independent world name brands, implementing the eight ministries and commissions including [the] Ministry of Commerce Guiding Suggestions of Supporting Development of Export Name brands (No.124, 2005), transforming trade growth methods and realizing the sustainable development of foreign, related matters on promoting development of export name brands with help of export credit insurance are now announced as follows:

1. All local administrative commercial departments and all business offices of China Export and Credit Insurance Corporation (hereinafter referred to as "China Credit Insurance") should establish effective coordination systems and get familiar with enterprises' demands so as to stipulate specific measures to promote development of export name brands with help of export credit insurance.
2. All local administrative commercial departments should cooperate with business offices of the China Credit Insurance, publicizing the policies function of export credit insurance, encouraging enterprises in the list of "key cultivated and developed export name brands of Ministry of Commerce" to explore international markets with advantages of export credit insurance, and develop international operation[s].
3. All business offices of China Credit Insurance are required to stipulate special service[s] for name brand[] export enterprises under the jurisdiction [and] report to local administrative commercial departments in time.

4. For name brands export enterprises that have already procure[d] export credit insurance, China Credit Insurance will grant them with qualifications of “key cultivated client” and “key client” in accordance with the insurance periods, according to which they may get relevant policy support.
5. China Credit Insurance will help to establish research centre[s], production [bases] and marketing net[works] in foreign countries with new products such as overseas investment insurance and labour insurance aboard.
6. China Credit Insurance will give priority to name brand export enterprises with value-added services such as [country] risk reports, industry analysis reports, risk management suggestion books, properly rais[ing] quantity of free services or provid[ing] favoured capital and credit investigation reports. These enterprises will also have the priority to use Internet business operation and service systems of “credit insurance entrance.”
7. China Credit Insurance should actively develop new products, go deep to study the originality and research and development, marketing and popularity of name brands, gaining and protecting patents, trying hard to provide new model[s] of credit insurance to name brand export enterprises.
8. For the satisfaction of name brand export enterprises’ requirements of individuation, China Credit Insurance will solve every special case with relevant methods and discuss the case as soon as it accepts it.

Please—all relevant departments [should] earnestly implement the spirit of this circular. If you encounter any problems, please report to [the] Ministry of Commerce Department of Foreign Trade as well as China Credit Insurance Department of Business Development immediately.

(All information published in this website is authentic in Chinese. English is provided for reference only.)

### **19. Circular on Implementing Export Credit Insurance (MOFCOM and China Export & Credit Insurance Corporation, August 2005)**

Source: Asian Legal Information Institute (AsianLII). Retrieved from <http://www.asianlii.org/cn/legis/cen/laws/cotmocacecicoieci1169/>

Shang Gui Fa [2005] No.389

To competent commercial departments of various provinces, autonomous regions, municipalities directly under the Central Government, cities specifically designated in the state plan and Xinjiang Production and Construction Crops, as well as various business organizations of China Export & Credit Insurance Corporation:

In order to implement the Several Opinions of the State Council on Encouraging, Supporting and Guiding the Development of Individual, Private and other Non-Public Enterprises (Guo Fa [2005] No.3), further perfect export supporting policies of individual, private and other non-public enterprises (hereinafter referred to as the “non-public enterprises”), improve the export promotion system of non-public enterprises and boost the active participation of non-public enterprises in “Going Global” so as to explore international markets, the Ministry of Commerce and China Export & Credit Insurance Corporation (hereinafter referred to as the “China Credit Insurance”) [have] decided to grant special preferential supporting measures to non-public enterprises. Therefore, related matters are hereby released as follows:

1. Competent commercial departments at all levels and various business organizations of China Credit Insurance shall establish effective work coordination mechanism[s], help non-public enterprises actively use export credit insurance to open up international market[s], improve their abilities of risk management and increase their profits from internationalized business.

2. The Ministry of Commerce and China Credit Insurance shall jointly provide non-public enterprises with the training for export trade risk management, [and] give assistance to such enterprises in establishing and improving export trade risk management mechanisms so as to avoid trade hazards and realize sound operation.
3. Various business organizations of China Credit Insurances shall closely cooperate with local competent commercial departments, publicize [the] policy-related functions of export credit insurance to non-public export enterprises, learn about [the] needs of these enterprises [in a timely way], formulate special service plans, offer target-oriented support and make pertinent reports to local competent commercial departments without delay.
4. As for providing non-public export enterprises with [convenient] customized services, China Credit Insurance and various business organizations thereof shall, based on the needs of enterprises, customize service programs of export credit insurance for such enterprises.
5. Small- and medium-sized non-public export enterprises shall be provided with simplified procedure[s] for insurance application and convenient services. The Small- and Medium-sized Enterprises' Comprehensive Insurance covered by the short-term export credit insurance businesses of China Credit Insurance shall, [in] its experimental period, be fully available to small- and medium-sized non-public enterprises
6. Non-public enterprises shall be given active assistance in solving their financing problems and provided with trade financing facilities and guarantee services under export credit insurance.
7. China Credit Insurance shall start the online business operation system named "Xinbaotong" for non-public enterprises under the insurance coverage, help these enterprises reduce labour costs and increase their work efficiency.
8. China Credit Insurance shall provide non-public enterprises with export credit management preferential services in an all-[a]round way for these enterprises' going global, including such services of product mix as ... short-term export credit insurance, medium- and long-term export credit insurance, overseas investment insurance, domestic trade credit insurance and overseas collection of business debts.

It is hereby [announced] that all districts and entities are requested to earnestly implement the spirit of this Circular, and report to the Ministry of Commerce (the Department of Planning and Finance) and China Credit Insurance (the Department of Business Development) any question found in the course of the said implementation.

## **20. Circular about the Relative Issues on Offering More Financing Support to Key Overseas-invested Projects (NDRC & State Development Bank of China, September 2005)**

Source: Unofficial translation from the Asian Legal Information Institute (AsianLII). Retrieved from <http://www.asianlii.org/cn/legis/cen/laws/cosdarcasdbocatrioomfstkop1690/>

Fa Gai Wai Zi [2005] No.1838

The development and reform commissions and the economic commissions (economic and trade commissions) of all the provinces, autonomous regions, municipalities directly under the Central Government, cities separately listed in the state plan, capital cities at deputy provincial level, and Xinjiang Production and Construction Corp., all the departments of the State Council, the institutions directly under the State Council, and the enterprises directly under the Central Government:

For the purpose of carrying out the [spirit] of the 16th National Congress of the CPC on accelerating the carry-out of the strategy of "Going Global," ensuring the implementation of the Central Government's instructions on "offering more financial support to overseas investments," and encouraging and supporting domestic enterprises to further improve their financing capability, exert their predominance and actively participate in the investments in key overseas projects, hereby the relevant matters are circulated as follows:

I. State Development and Reform Commission and State Development Bank of China shall, in accordance with the national development plan on overseas investments, draw up annual plans on financing support to key overseas-invested projects, and the State Development Bank of China shall, in its scale of annual equity loans, specially arrange a certain loan fund (hereinafter referred to as “equity loans for overseas investments”) so as to support the capital expansion of key overseas-invested projects encouraged by the state and improve their financing capacity.

II. The equity loans for overseas investments shall be mainly in use of supporting the key overseas-invested projects as follows:

- (1) overseas resource exploitation projects that may make up the relative insufficiency of domestic resources;
- (2) overseas production or infrastructure projects that may boost the export of domestic technologies, products, equipment and labour services, etc.;
- (3) projects of overseas research and development centres that may make use of international advanced technologies, management experiences and professional talents; and
- (4) projects of overseas enterprise acquisition and merger that may promote enterprises’ internationally competitive edge and speed up the expansion of international market.

III. All the enterprise’s legal persons registered within the territory of the People’s Republic of China (hereinafter referred to as “domestic investment entity”) may give an application for equity loans for overseas investments, and the specific procedures are as follows:

- (1) A domestic investment entity shall submit an application with the State Development Bank of China for the equity loans, and the State Development Bank of China shall, in accordance with the annual plans on the financing support of key overseas-invested projects jointly drawn up together with the State Development and Reform Commission, carry out independent examination and verification and issue a letter of commitment on equity loans;
- (2) A domestic investment entity shall submit a project application report or a project archival filing application to the State Development and Reform Commission or the provincial development and reform commission, and enclose the letter of commitment on equity loans issued by the State Development Bank of China to it; and
- (3) The State Development and Reform Commission or the provincial development and reform commission shall audit and verify the project and send a copy of documents on the examination and verification or the project archival filing of to the State Development Bank of China, and the State Development Bank of China shall make a final ascertainment for it in accordance with the conditions for offering equity loans to projects.

IV. For key projects that have obtained equity loans for overseas investments, the State Development and Reform Commission shall strengthen policy guidance, reinforce necessary coordination, promote successful project implementation and achieve good economic and social benefits.

V. The State Development Bank of China shall, in accordance with the relative provisions, speed up the loan examination and verification for key overseas-invested projects and provide a certain preferential interest rates in accordance with the actual conditions of projects by following the risk pricing principle and making loan rates cover credit risk, market risk and state risk, etc. as possible.

VI. The State Development Bank of China shall also provide such support and services to key overseas-invested projects as follows:

- (1) offering large and stable medium and long-termed non-equity loans to key overseas-invested projects;
- (2) strengthening cooperation with international financial organizations or transnational companies, organizing the international syndicated loans and foreign loans, etc., and assisting [in carrying] out financing schemes;
- (3) offering industrial analysis and risk appraisal of infrastructure, basic industries and pillar industries and other services;
- (4) offering supporting financial services concerning letters of credit and international settlement pertinent to the projects; and
- (5) offering such financial derivative services, as foreign exchange and interest rate risk management.

### **21. Detailed Rules for the Examination and Approval of Investments to Open and Operate Enterprises Abroad (MOFCOM, October 2005)**

Retrieved from [http://www.gov.cn/gongbao/content/2006/content\\_401218.htm](http://www.gov.cn/gongbao/content/2006/content_401218.htm)

English translation from government website: [http://english.shaanxi.gov.cn/channel/print.shtml?/chinadoc/chinafive/governmentfive/200812/3352\\_1](http://english.shaanxi.gov.cn/channel/print.shtml?/chinadoc/chinafive/governmentfive/200812/3352_1)

*Circular of the Ministry of Commerce on the Printing and Distribution of the "Detailed Rules for the Examination and Approval of Investments to Open and Operate Enterprises Abroad"*

Shang He Fa No. [2005] 527

The competent commerce authorities of all provinces, autonomous regions, municipalities directly under the central government, municipalities specifically designated in the state's planning, and Xinjiang Production and Construction Corps:

Our ministry has formulated the "Detailed Rules for the Examination and Approval of Investments to Open and Operate Enterprises Abroad" in order to further implement relevant stipulations in the *Provisions on the Examination and Approval of Investments to Open and Operate Enterprises Abroad* (Ministry of Commerce Order No. 16 Year 2004), to promote the standardization, rationalization, efficiency and transparency of the examination and approval of outward investment by competent departments of foreign economic cooperation at all levels. Now it is promulgated. Please implement it.

We hereby issue this circular.

Ministry of Commerce

October 17, 2005

#### **Detailed Rules for the Examination and Approval of Investments to Open and Operate Enterprises Abroad**

**Article 1** For the purpose of better implementing the *Provisions on the Examination and Approval of Investments to Open and Operate Enterprises Abroad* (Order No. 16 [2004] of the Ministry of Commerce, hereinafter referred to as the "Provisions") and promoting the examination and approval of investments abroad in a normative, scientific, efficient and transparent manner, these Detailed Rules are formulated in pursuant to the *Administrative License Law of the People's Republic of China*, the *Decision of the State Council on Establishing Administrative Licensing on the Administrative Examination and Approval Items That Really Need to Be Preserved* and the relevant laws and regulations.



**Article 2** The administrative department[s] of commerce at the provincial level of all provinces are entrusted by the Ministry of Commerce, and shall carry out the examination and approval of outward investments by domestic enterprises according to the Provisions and these Detailed Rules.

**Article 3** As to the investment environment of a host country (region), the priority of examination and approval shall be addressed to the following aspects:

- (I) The political situation or society is stable, and it is not [in a] state of war or social convulsion;
- (II) Its economy is normally performing, it is not under an economic crisis, and its exchange rate and tax system are stable;
- (III) Its laws and regulations are sound and complete, and it has clear regulations and policies that encourage and protect outward investments;
- (IV) It has the infrastructure such as water, power, gas, transportation and telecommunication facilities as well as the conditions for energy supply; and
- (V) It has a corresponding labour force.

**Article 4** As to the safety situation of a host country (region), the priority of examination and approval shall be addressed to the following aspects:

- (I) No large-scale nationalization or expropriation aimed at outward investments has ever occurred, and it is not a region with rampant terrorism, and the safety of foreign-invested enterprises and their staff members can be ensured;
- (II) Its financial and foreign exchange policies are stable, and there [are] legal guarantees for foreign-invested enterprises to remit their profits;
- (III) The business operations of enterprises are [not] frequently disturbed by the political parties, radical organizations or groups, and the country's (region's) security conditions are relatively good; and
- (IV) There is no dispute over state sovereignty at the locality of the investment.

**Article 5** As to political and economic relations between the host country (region) and our country, the priority of examination and approval shall be addressed to the following aspects:

- (I) Whether it has established diplomatic relations with our country;
- (II) Whether it is a trade partner of our country, and whether there is any trade discrimination against our country; and
- (III) Whether it implements unfair special limits to the exit and entry of our country's citizens.

**Article 6** As to whether the investments comply with our country's policies that guide outward investments, the priority of examination and approval shall be addressed to the following aspects:

- (I) whether the investment falls under any category of the Catalogue of Industries for Guiding Outward Investment;
- (II) Whether the investment can promote the exportation of domestic products, equipment and technologies with competitive advantages, as well as the export of labour services.
- (III) Whether the investment can make use of foreign advanced technologies and management experiences to enhance the enterprise's technical research and development capacity and its international competitiveness; and

(IV) Whether the investments are good for the enterprise to carry out its brand strategy and to establish an internationally recognized brand.

**Article 7** As to the reasonable overall arrangement in a host country (region), the priority of examination and approval shall be addressed to the following aspects:

(I) Whether the investments by Chinese enterprises in the same industry of the host country are excessively concentrated; and

(II) Whether the production capacity of Chinese enterprises abroad matches the market capacity of the host country, and whether the products of Chinese enterprises belong to any field with excessive competition in the host country.

**Article 8** As to the implementation of relevant international conventions involved in outward investments, the priority of examination and approval shall be addressed to the following aspects:

(I) International conventions on nuclear non-proliferation;

(II) International conventions on prohibiting the development, manufacturing and sales of drugs;

(III) International conventions on environmental protection and the protection of endangered animals and plants;

(IV) International conventions on food safety; and

(V) International conventions on the protection of intellectual property.

**Article 9** As to the lawful rights and interests of foreign investors protected by the host country, the priority of examination and approval shall be addressed to the following aspects:

(I) Whether the host country has concluded any bilateral convention on investment protection with our country;

(II) Whether the host country has concluded any bilateral convention on the avoidance of double taxation with our country; and

(III) Whether the host country has ever confiscated at will or fined local Chinese-funded enterprises for no reason.

**Article 10** As to outward investments conducted by way of merger or acquisition, the priority shall be addressed to:

(I) Whether the investment involves any industry that is sensitive or restricted from investment by law of the host country;

(II) Whether relevant legal issues are taken into consideration;

(III) Whether the political and safety risks of the host country as well as the enterprise's financial risks are taken into consideration; and

(IV) Whether the host country's labour unions, corporate social responsibilities as well as cultural integration are taken into consideration.

**Article 11** Outward investments in any of the following fields are prohibited by our country:

- (I) Investments that endanger the state's sovereignty, security or social and public interests;
- (II) Investments that utilizes unique techniques or technologies that are prohibited by China from exportation;
- (III) Investments in areas of operation prohibited by the Chinese law;
- (IV) Investments in any field as prohibited from being invested in by foreign law or international conventions that have been concluded with or acceded to by our country; or
- (V) Investments that engage in transnational crime.

**Article 12** For outward investments consistent with the guidance, the state shall encourage them and provide policy support in diplomacy, taxation, foreign exchange, customs, credits, insurance, etc.; and the state will not approve prohibited outward investments and will take measures to deter such investments.

**Article 13** The power to interpret these Detailed Rules shall remain with the Ministry of Commerce.

**Article 14** These Detailed Rules shall come into force as of the date of promulgation.

## **22. Notice on Using and Managing Special Funds for Foreign Economic Cooperation (MOFCOM & Ministry of Finance, December 2005)**

Retrieved from <http://www.shandongbusiness.gov.cn/index/content/sid/39743.html>  
English translation purchased from Chinalawinfo

### **Notice of the Ministry of Finance and the Ministry of Commerce on Issuing the *Measures for the Administration of Special Funds for Foreign Economic and Technology Cooperation***

Cai Qi No. [2005] 255

The finance departments (bureaus) and competent commercial departments of all provinces, autonomous regions, municipalities directly under the central government and municipalities specifically designated in the state's planning, the Financial Bureau and the Commercial Bureau of Xinjiang Production and Construction Corps., all the economic and commercial agencies stationed abroad and all the enterprises directly under the central government:

In order to carry out the guidelines of the Central Committee of the CCP and the State Council for the development strategy of "Going Global" and regulate the administration of special funds for foreign economic and technology cooperation, we have formulated the Measures for the Administration of Special Funds for Foreign Economic and Technology Cooperation, which are hereby printed and distributed to you, and please implement them accordingly.

Attachment: Measures for the Administration of Special Funds for Foreign Economic and Technology Cooperation

December 9, 2005

Attachment

### **Measures for the Administration of Special Funds for Foreign Economic and Technology Cooperation**

**Article 1** For the purpose of implementing the strategy of "Going Global," encouraging and guiding enterprises with competitive advantages to carry out all kinds of foreign economic and technology cooperation, strengthening and regulating the administration of special funds for foreign economic and technology cooperation ("special funds" below), and improving the efficiency of using funds, these Measures are specially formulated according to the Budget Law of the People's Republic of China and the relevant provisions on the administration of fiscal budget.

**Article 2** The following principles shall be followed for the administration and use of special funds:

- (I) Exercising the administrative power according to law, and being open and transparent;
- (II) Complying with the guidelines of the State's industrial policies;
- (III) Complying with the State's policies on foreign economy and trade; and
- (IV) Being beneficial for the promotion of economic development and technical progress of the country where the project is located.

**Article 3** The scope of foreign economic cooperation as mentioned in these Measures includes: overseas investment, overseas agricultural, forestry and fishery cooperation, overseas project contracting, overseas labour services cooperation, establishment of overseas research and development platforms for high and new technologies, and overseas designing consultation, etc.

**Article 4** The special funds support enterprises that engage in the aforementioned foreign economic and technology cooperation by providing direct subsidies or interest subsidies.

**Article 5** "Direct subsidies" of the special funds subsidize relevant fees incurred before a domestic enterprise registers any overseas enterprise at the country where the project is located or concludes overseas economic and technical cooperation agreements (contracts) with any entity of the country where the project is located, for the purpose of winning the project. Such fees include: legal, technical and commercial consultation fees for engaging a third party, fees for compiling feasibility study report on the project, translation fees for regulative documents and bidding documents, fees for purchase of regulative documents, bidding documents and other materials, and operational fees for overseas labour services cooperation, overseas platforms for the research and development of high and new technologies, overseas designing consultation, etc. "Interest subsidies" of the special funds subsidize medium- and long-term loans from domestic banks incurred for projects such as overseas investment, cooperation, and project contracting, etc.

**Article 6** The Ministry of Finance and the Ministry of Commerce shall determine the priority areas and scope for which the special funds shall be used to support for the present year in the form of a "notice."

**Article 7** An enterprise applying for the special funds shall meet the following fundamental criteria:

- (I) Having registered within the territory of the People's Republic of China and having an independent legal-person status;
- (II) Having obtained written documents of relevant state departments on the approval (examination and approval, or filing for record) of engaging in foreign economic and technology cooperation;

(III) Having no major violation of law or regulations, or malicious default of governmental funds within the latest five years; and

(IV) Having submitted statistical materials as required.

**Article 8** A project applying for the special funds shall meet the following criteria:

(I) Having been approved, registered or filed for record by relevant state departments;

(II) Having been registered or filed for record by the country where the project is located, and the project has come into effect according to law;

(III) The contractual sum for an overseas contracting project in principle shall not be less than US\$5 million (or equivalent currencies); the investment amount of the Chinese party for an overseas investment project or an agricultural, forestry or fishery cooperation project in principle shall not be less than US\$1 million (or equivalent currencies); and the contractual sum for overseas labour services cooperation, overseas platforms for the research and development of high and new technologies, and overseas designing consultation in principle shall not be less than US\$500 thousand (or equivalent currencies);

(IV) As to the projects applying for interest subsidies for medium- and long-term loans, the following requirements shall be met:

1. The loans for which interest subsidies are applied shall be medium- and long-term loans over one year (one year included) from domestic banks;
2. The loans shall be used for the construction and operation of foreign economic and technology cooperation projects;
3. The amount of a single loan shall be no less than CNY3 million (or equivalent foreign currencies);
4. The cumulative sum of loans for which interest subsidies are applied for each project shall not exceed the total amount of the Chinese investment or the contractual sum; and
5. Interest subsidies that may be granted to each project shall be no more than five (5) years.

(V) Fixed-amount operational fee support is applicable for overseas platforms for the research and development of high and new technologies, overseas labour services cooperation, and overseas designing consultation, and the specific criteria shall be separately formulated.

**Article 9** As a general principle, the proportion of direct subsidies shall not exceed 50 per cent of the fees actually paid by the applying enterprise, and the above-mentioned subsidies can be given to each project only once.

**Article 10** The rate of interest subsidies for medium and long-term loans shall be:

(I) The rate of interest subsidies for Renminbi loans shall not exceed the base interest rate as promulgated and implemented by the People's Bank of China; if the actual interest rate is lower than the base interest rate, the rate of interest subsidies shall not exceed the actual interest rate; and

(II) The annual rate of interest subsidies for loans in foreign currencies shall not exceed 3 per cent, if the actual interest rate is lower than 3 per cent, the annual rate of interest subsidies shall not exceed the actual interest rate.

**Article 11** The special funds shall be calculated and paid in Renminbi.

**Article 12** The following application materials shall be submitted to apply for the special funds:

- (I) An application including basic formation on the project, loans for the project or fees as expended, and analysis of projected proceeds from the project;
- (II) Documents on the State's approval of foreign economic and technical operation projects;
- (III) Annual audit reports of the applying enterprise for the last three years;
- (IV) Proof of fees paid or the list of interest settlements (photocopies shall be affixed with the seal of the enterprise);
- (V) Written opinions issued by the economic and commerce department of Chinese embassies (consulates) in foreign countries;
- (VI) Other materials as required.

**Article 13** An enterprise shall, when submitting the relevant application materials in a foreign language, concurrently submit their Chinese translation, and shall properly compile all the application materials into books in the above-mentioned order.

**Article 14** Application procedures

- (I) A local enterprise shall submit application materials as stipulated in these Measures and the notice to the provincial finance and commerce departments, which shall be responsible for the preliminary examination of the application materials according to this Notice and jointly submit them to the Ministry of Finance and the Ministry of Commerce before the required time; and
- (II) The application materials of an enterprise directly under the central government shall be submitted to the Ministry of Finance and the Ministry of Commerce separately before the required time.

**Article 15** The Ministry of Finance shall, together with the Ministry of Commerce, entrust intermediary institutions to examine and approve the application materials submitted by the enterprises directly under the Central Government and application materials from provincial level departments, and determine the amount of fee subsidies and the amount of interest subsidies.

**Article 16** The special funds shall be disbursed by the Ministry of Finance according to the fiscal budgetary level.

**Article 17** An enterprise shall, after obtaining the special funds, deal with them according to relevant financial provisions.

**Article 18** All the relevant enterprises shall manage and use the fiscal special funds in strict accordance with provisions of the State, and be voluntarily subject themselves to the supervision and inspection of the finance, commerce and auditing departments.

**Article 19** All the relevant entities shall file applications in strict accordance with the State's provisions on the scope that the special funds support and the time of application. No enterprise may cheat or hold back the special funds in any form. Where any enterprise violates the provisions, the Ministry of Finance and the Ministry of Commerce shall take back all the fiscal special funds, cancel the enterprise's qualification for future annual application, and deal with it in accordance with the *Regulation on Penalties and Sanctions against Illegal Fiscal Acts*.

**Article 20** The power to interpret these Measures shall remain with the Ministry of Finance and the Ministry of Commerce.

**Article 21** These Measures shall come into force as of the date of promulgation.

### 23. Circular on Relevant Issues Concerning Financial Interest Subsidy to Loans for Foreign Contracted Projects in 2005 (MOFCOM & Ministry of Finance, January 2006)

Retrieved from <http://www.asianlii.org/cn/legis/cen/laws/cotmofatmocoricistlffcp20051512>

Cai Qi [2006] No.5

Departments (Bureaus) of Finance, Commerce Authorities in Charge in all provinces, autonomous regions, and municipalities directly under the Central Government, and cities specially designated in the state plan, Bureau of Finance and Bureau of Commerce of the Xinjiang Production and Construction Corps, all the enterprises administered by the Central Government, and all the economic and commercial authorities stationed in foreign countries:

In order to support and encourage the enterprises with comparative advantages to "Go Global," and to further expand the business of foreign contracted projects, and in accordance with the budget arrangement of the Central Government, interest subsidies will be granted to commercial loans acquired from the domestic banks to fulfill the foreign contracted projects of Chinese enterprises. And a circular on relevant issues is hereby given as follows:

#### I. Required Qualifications for the Enterprise and Project Applying for Interest Subsidy

(i) These qualifications as follows are required for the enterprise applying for interest subsidy:

1. Legally registered and having an independent status of a legal person;
2. Having the qualification approved by the Ministry of Commerce in foreign economic cooperation business;
3. Having not committed such activities as falling into arrears of and misappropriating fund for joint venture or cooperation program of foreign aid; and
4. Accepting guidance and coordination from the finance and commerce authorities in charge and the Chinese economic and commercial authorities stationed in foreign countries

(ii) The program applying for interest subsidy shall meet these conditions as follows:

1. Submitting the statistical materials in accordance with the provisions in the Statistical System on Foreign Contracted Projects, Labor Service Cooperation, Designing and Consulting; and
2. The program contract shall be valid within the period from January 1, 2005 to December 31, 2005, and the contracted value of each program shall be not less than US\$5 million (or equivalent in other currencies); and
3. The loan contract of a program shall be valid within the period of from January 1, 2005 to December 31, 2005, and the amount of each loan shall be not less than CNY10 million (or equivalent in other currencies); and
4. The contract-signing enterprise shall be identical with the loan enterprise; and
5. According with China's policies in foreign trade and economic cooperation.

#### II. The Application Document and Procedure

(i) An enterprise applying for interest subsidy shall provide these documents as follows:

1. An application letter for interest subsidy;
2. A specification of the enterprise's application (refer to Annex I for details);
3. Basic information of the foreign contracted project and a list of interest payment for bank loans in 2005 (refer to Annex II for details);
4. A copy of the duplicate of Business License for Enterprises as Legal Persons;

5. A copy of the commerce part of the program contract (Chinese version or a translated version in Chinese);
6. The written opinions concerning the implementation of [the] contract from the Chinese economic and commercial authorities stationed in foreign countries, including the contracted value, date of starting construction, progress of implementation, and expected date of completion etc.;
7. A copy of the loan contract from the bank; and
8. A duplicated copy of the voucher of clearing for [the] bank loan, interest payment and loan repayment.

(ii) Procedure of Application

1. The enterprise administered by the local government shall, before February 28, 2006, submit the aforesaid documents to the local provincial finance and commerce authorities in charge respectively, who then shall conduct a first-instance examination on the programs applying for [the] interest subsidy in accordance the provisions in this Circular, fill in the Summary Statement of the First-instance Examination on Interest Subsidy for Loan of Foreign Contracted Project (refer to Annex IV for details), and together submit them to the Ministry of Finance and the Ministry of Commerce before March, 31 2006;
2. The enterprise administered by the central government shall submit, together with other relevant application documents, the Summary Statement of the First-instance Examination on Interest Subsidy for Loan of Foreign Contracted Project to the Ministry of Finance and the Ministry of Commerce respectively before March, 31 2006;
3. The Ministry of Finance and the Ministry of Commerce shall together release the documents on funds subject to [the] interest subsidy, after they entrust the intermediary institutions to examine the applied programs. And the Ministry of Commerce shall, within 15 days as of the date of the release of these documents concerned, directly appropriate the funds subject to interest subsidy to the applicant enterprise.

III. Standard for Interest Subsidy

- (i) The interest subsidy rate per year for the RMB loan shall be no more than the benchmark interest rate of the corresponding period promulgated by the People's Bank of China, and the one for the foreign currency loan no more than 3 per cent;
- (ii) The term limit of [the] interest subsidy shall be calculated in accordance with the actual loan term limit on month of the Gregorian calendar;
- (iii) The time of [the] interest subsidy for a program shall be no more than three (3) years;
- (iv) Interest subsidies shall not be granted to interest increase and interest penalty outside normal loans;
- (v) Interest subsidies shall only be granted to one loan for each foreign contracted project; and
- (vi) The amount of interest subsidy shall be calculated in RMB.

IV. The economic and commercial authorities stationed in foreign countries shall, in accordance with the requirements in Item 6, Paragraph 1, Article 2 of this Circular, issue written opinions for the applicant enterprises (refer to Annex III for details).



V. In order to do the work [relating to the] financial interest subsidy [well] in 2005 and to enhance the efficiency, all the enterprises are required to prepare the application documents concerning [the] interest subsidy and bind [them up] into volumes, and to compile catalogues upon program in accordance with the provisions in this Circular.

VI. The enterprise, upon receiving funds subject to [the] interest subsidy, shall utilize them to reduce the financial expense of the year concerned. Any unit may not defraud and withhold the funds subject to [the] interest subsidy in any form or with any reason. With regard to those in violation of the provisions, the Ministry of Finance and the Ministry of Commerce shall draw back all the funds subject to [the] interest subsidy and revoke their qualifications for [the] interest subsidy, and give them serious treatment in accordance with the Penalty Regulations on Financial Offences against the Law[.]

Annexes:

1. The Specification of the Enterprise's Application
2. Basic Information of the Foreign Contracted Project and List of Interest Payment for Bank Loans in 2005
3. Opinions of Office of Economic and Commercial Counselor Stationed in \_\_\_\_\_
4. Summary Statement of the First-instance Examination on Interest Subsidy for Loan of Foreign

Contracted Project

[The annexes are not reproduced here but are available at the link provided above].

#### **24. Encouraging and Supporting "Go-Global" of Privately Owned Enterprises (Draft) (MOFCOM, February 2006)**

Retrieved from [http://www.ksboftec.gov.cn/pd\\_contents/view/18266/menu\\_id:742](http://www.ksboftec.gov.cn/pd_contents/view/18266/menu_id:742) (in Mandarin Chinese)  
Translation by IISD

**Opinions on Encouraging and Supporting Private Enterprises "Going Global"** (Draft soliciting input, February 9, 2006)

As a major power fueling national economic development, private enterprises are entering a phase of rapid development in international economic cooperation. The opening of China has entered a new stage. The following opinions have been formulated to enhance the active role that private enterprises play in implementing the "Going Global" strategy.

- I. The significance of private enterprises "going global" should be fully acknowledged

Encouraging and supporting private enterprises to "go global" is of strategic importance. To grow multinational enterprises with global competitiveness, this should be approached from all aspects including outward investment, overseas project contracting, overseas labor services cooperation, and active participation in international competition and cooperation. This should be done in order to accelerate the economic growth mode transition and structural adjustment, to facilitate sustainable and sound development of the Chinese economy, and to achieve the goal of building a moderately prosperous society in all respects.

Private enterprises "going global" fully utilize the advantages of private enterprise in ownership, mechanism, cost, and entrepreneurship, improving participation in competitive international markets, and bringing into full play the capacity to utilize "two markets and two types of resources." It fully utilizes the competitive advantages of private enterprises in competitive industries and the rising position of industrial clusters consisting of primarily small- and medium-sized enterprises in global industrial chains. It takes advantage of the flexibility and apolitical nature of private enterprises in competitive global markets and, through business-to-business cooperation, promotes the development of Chinese foreign relations through the strengthening and deepening of individual and economic diplomacy.

After more than twenty years of development, reform and opening, private enterprises have acquired the capacity to "go global" in production technology, equipment, research and development, corporate management, overall employee quality, etc. In recent years, the desire of private enterprises to engage in foreign economic cooperation has become increasingly strong. A number of enterprises have been successful in "going global" with relatively large-scale investments. There has been an observable trend in large enterprise development driving the development of small- and medium-sized enterprises. However, private enterprises still face real institutional hurdles and other difficulties in "Going Global," and effective measures must be taken to solve these problems.

Therefore, the significance of encouraging and supporting private enterprises to "Go Global" should be fully acknowledged at the level of comprehensive economic and social development and the overall opening of our country. We should fully grasp the strategic importance of the opportunity presented by the first 20 years of this century, plan domestic development and opening in a coordinated way, and increase support for private enterprises to "go global."

## II. Advancing reform of the administrative system and accelerating the facilitation of private enterprises "going global"

The primary role that enterprises play in the market should be strengthened, the principles of equal access and fair treatment should be implemented, and the facilitation of private enterprises in "going global" should be solidly promoted. Private enterprises should be viewed and treated the same as all other enterprises in regards to foreign market access, the examination and approval of outward investment, and the examination and approval of business and operation qualifications for overseas project contracting and overseas labor services cooperation, and foreign market access. Qualified private enterprises should be allowed to engage in overseas project contracting and overseas labor services cooperation so as to fully engage private enterprises in international economic cooperation.

The state encourages and supports private enterprises in sectors such as light industry, textiles, clothing, domestic appliances, machinery, building materials, communications, etc. to invest, set up factories, and establish overseas production bases in qualified countries and regions, especially neighboring and developing countries. This is accomplished through solely-funded undertakings, joint ventures, cooperative ventures, mergers, and acquisitions. The state supports capable private enterprises to set up research and development centers as well as research and development-oriented enterprises in overseas regions where technological resources are concentrated. The state supports qualified private enterprises in taking advantage of their own strengths to actively engage in the exploitation and cooperative development of overseas resources. The state supports qualified private enterprises, acting independently or in conjunction with other domestic and foreign enterprises, to engage in overseas project contracting, through ways of common global practices, and to strive to win contracts for high value-added construction projects. The state promotes qualified private enterprises to engage in overseas service industries such as trade and distribution, financial services, information consulting, logistics and shipping, culture and tourism, etc.

Foreign affairs administration systems, personnel exit and entry, customs clearance of goods, etc. should be improved, with the features of private enterprises in consideration, to provide convenience for operations and management personnel of private enterprises to do business overseas.

### III. Strengthening policy support to facilitate private enterprises “going global”

All policies of all departments that support enterprises “going global” in sectors such as finance and taxation, credit, foreign exchange, insurance, etc. should be applicable to private enterprises. Private enterprises enjoy the same policy treatment as enterprises of other types of ownership.

Finance and taxation support should be strengthened. Qualified private enterprises may use the central government Foreign Trade Development Fund to engage in processing and assembling trade overseas with materials. They may also make use of foreign assistance, joint ventures and cooperative funding for overseas investment, factory establishment, and resource exploitation. To develop international markets, they may take advantage of the state’s international market development funds for small and medium sized enterprises. The “Loan Interest Subsidy Fund for Overseas Project Contracting” and “Outward Guarantee Under Government Special Fund for Overseas Construction” should be used effectively to support qualified private enterprises to develop the overseas project contracting market. In accordance with current policy, export rebates should be granted to private enterprises promoting exports through foreign project contracts or making outward investments in physical goods such as equipment, parts, etc.

Credit support should be strengthened. State policy-oriented financial institutions should play their role in providing support to private enterprises engaged in outward investment, overseas resource exploitation, and overseas project contracting that are encouraged by the state. Such support may include policy-oriented loan interest subsidies and favourable export credit. Provided that risks are adequately assessed and effectively controlled, financial services should be strengthened so as to provide convenience to private enterprises “going global” and developing international markets. The state provides financial support to qualified private enterprises through a variety of mechanisms including overseas listings, bonds, project financing, etc. Private enterprises may provide financing guarantees to their overseas subsidiaries upon approval.

Restrictions on foreign exchange should be eased. To invest overseas, private enterprises may use their own foreign exchange reserves, apply for domestic foreign exchange loans, or purchase foreign exchange. Revenue from an overseas enterprise may be used to increase enterprise capital or may be reinvested overseas. Increased convenience shall be provided in foreign exchange verification and write-offs for exportation driven by projects encouraged by the state. In order to encourage capable private enterprises to scale up outward investment, the state allows private enterprises with good export track records to have discretion over a certain amount of foreign exchange in their capital accounts.

Insurance services should be strengthened. Policy-oriented insurance institutions should play their role in establishing and improving risk-protection mechanisms which meet the needs of private enterprises “going global” and which increase private enterprise risk resistance.

### IV. Strengthening guidance and services enabling private enterprises to “go global”

All relevant departments should strengthen coordination and collaboration, improve country-specific guiding policy on encouraged industries, strengthen country-specific investigation on obstacles to outward investment, and provide proper guidance for private enterprises “going global.” Based on their local circumstances, all levels of local government should take proactive measures to encourage and support qualified local private enterprises to “go global” and engage in international operations and promote the development of the local export-oriented economy.

Information sharing and services should be improved and promoted. An information network service system should be established for private enterprises "going global" and the existing information system should be fully utilized to provide information services to enterprises, such as information regarding trade and investment, cooperative economic projects, the market environment, laws, and regulations of relevant countries, resources, etc. Non-governmental intermediary agencies should be developed to provide legal, financial, consulting, intellectual property, licensing, and other services for private enterprises "going global." Promotional mechanisms should be established and improved, and private enterprises should be actively guided and organized for participation in commercial and non-commercial activities promoting outward investment and foreign trade. All multilateral and bilateral economic cooperation mechanisms between governments should be used to enable private enterprises to strengthen their economic cooperation with enterprises of other developing countries.

The state should provide guidance to private enterprises to accelerate the building of modern enterprise systems, improve mechanisms, increase global competitiveness, and grow in both size and competitiveness as they "go global." The state encourages private enterprises to implement brand strategy, increase efforts in technology and innovation, and strive to increase the capacity of independent innovation in their process of "going global." The state should provide guidance to small- and medium-sized enterprises to engage in specialized collaboration and industrial cluster development with large enterprises; establish stable collaborative relations in supply, production, sales, technology development, etc.; and achieve complementary strengths and resource sharing. Private enterprises that "go global" should follow the rules of the market economy, act in accordance with their capacity, take one step at a time, make well-founded assessments, make decisions with caution and care, and strive to avert risks to increase the odds of success in "going global."

Personnel training should be accelerated to improve the quality of the operations and management personnel of private enterprises. More training should be provided to private enterprise investors and operations and management personnel. Knowledge regarding international operations and international business practices should be widely disseminated. The concept of the rule of law and awareness of honesty and integrity should be strengthened. International operations and management capacity should be improved and a corps of high-performing multitasking personnel should be trained as skillful business people familiar with international rules and proficient in foreign languages. The globalization of the human resources market should be accelerated and services for international exchange of human resources should be provided to private enterprises.

Chinese embassies (consulates) should play their role. Chinese embassies and consulates should assist private enterprises in acquiring information regarding the countries in which they are located, proactively build connections for enterprises to "go global," and help enterprises to overcome difficulties. They should guide Chinese-funded enterprises in conducting business in compliance with the law. They should organize and establish chambers of commerce for Chinese-funded enterprises overseas as well as attract private enterprises to join the chambers of commerce. To facilitate problem solving, they should strengthen consultation and negotiation with governments in the countries in which they are located in regards to obstacles encountered by business personnel in exiting and entering certain countries, difficulty in acquiring visas, etc. Consular protection should be strengthened to safeguard the legal rights of Chinese-funded enterprises and their personnel overseas. Enterprises should also be given guidance in formulating safety protection measures to increase their capacity to safeguard their personnel and assets as well as handle unexpected incidents. Private enterprises should proactively communicate with and report information to Chinese embassies (consulates) and accept guidance from embassies (consulates).

V. Strengthening coordination, supervision, and regulation to ensure that private enterprises "go global" in an orderly fashion

The state should include the foreign economic cooperation of private enterprises in the state's "go global" supervision and regulation system. The system should be fine-tuned, the methods and general quality of supervision and regulation systems improved, and supervision and regulation practices standardized. Private

enterprises should comply with relevant national laws and regulations, accept the supervision and regulation of relevant government authorities, and submit relevant business statistics as required.

Based on international rules, relevant laws and regulations, communications and cooperation between the government, business associations, and intermediary agencies should be strengthened to solve problems and conflicts that private enterprises encounter as they “go global.” The behavior of private enterprises in the market should be regulated to safeguard the state’s interests and the overall interests of enterprises. In their international dealings, private enterprises should have a view of the big picture and be aware of their social responsibilities. They should take the initiative in safeguarding the image of the state and enterprises, comply with the laws and regulations of the countries in which they are located, respect local customs and habits, properly handle interest-based relations with local parties, and achieve development for all through mutually beneficial cooperation.

Relevant coordination mechanisms and measures should be improved and strengthened. Chambers of commerce, business associations, and overseas chambers of commerce for Chinese-funded enterprises should play their roles. Industry self-regulation should be strengthened, business order safeguarded, and malicious competition avoided. Those who do not accept the coordination and cause damage to the state’s interests should be held accountable.

## **25. *Outward Investment Sector Direction Policy & 2006 Catalogue of Industries for Guiding Outward Investment* (NDRC, MOFCOM, Ministry of Foreign Affairs, SAFE & other entities, July 2006)**

Source : <http://www.csoet.cn/n16/n1100/n38116/n38723/205234.html> (in Mandarin Chinese)  
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### **Guiding Policy on Outward Investment Industries**

**Article 1** This Guiding Policy on Outward Investment Industries was formulated based on China’s national economic and social development plan and according to the requirements of investment system reform and industry policy, in order to accelerate the implementation of the “Going Global” strategy, to promote effective, orderly, coordinated and sound development of outward investment, and to provide guidance on the direction of outward investment.

**Article 2** China encourages and supports enterprises of all categories with competitive advantages to make outward investment. In order to increase enterprises’ international competitiveness and cooperative participation, deepen exchange and cooperation with other countries, and promote development for all, China encourages the optimal utilization of both domestic and international markets and the optimal allocation of resources through outward investment.

Enterprises are the subjects of outward investment. In their outward investment, enterprises should conform to principles of market economy and common international rules, uphold the principles of complementary strengths and mutual benefits, comply with local laws and regulations, establish a good international reputation, and take adequate precautions against risks of all kinds.

**Article 3** This policy is applicable to economic activities that center on the establishment or purchase of foreign (outside of Chinese territory) enterprises or assets overseas or in the regions of Hong Kong, Macau and Taiwan, in order to acquire ownership, right to earnings, right of management, etc., by investors within China investing cash, physical goods, marketable securities, and intangible assets, etc. through new establishment, acquisition and merger, equity participation, and re-investment, etc., directly or through holding companies overseas.

**Article 4** Outward investment projects fall into three categories: encouraged, allowed, and prohibited. The National Development and Reform Commission (NDRC) and Ministry of Commerce (MOC), together with other relevant agencies, have formulated “Catalogue of Industries for Guiding Outward Investment,” which is attached to this policy. The NDRC and MOC will revise and improve the catalogue together with relevant agencies in a timely manner. Encouraged and prohibited outward investment projects are listed in the “Catalogue of Industries for Guiding Outward Investment.” Outward investment projects that fall under neither the encouraged category nor the prohibited category are allowed outward investment projects. Allowed outward investment projects are not included in the “Catalogue of Industries for Guiding Outward Investment.”

**Article 5** This policy and the “Catalogue of Industries for Guiding Outward Investment” is one of the bases for relevant agencies to formulate relevant policies on outward investment.

**Article 6** An outward investment project that meets one of the following is encouraged:

- (I) Can acquire resources or raw materials for which there is a domestic shortage and an urgent need for the national economic development;
- (II) Can promote the export of domestic products, equipment and technologies with competitive advantages, as well as the export of labor service.
- (III) Can significantly improve China’s capacity in technology, research, and development, and can utilize global cutting-edge technologies, advanced management expertise, and professionals.

**Article 7** An outward investment project that meets one of the following is prohibited:

- (I) Endangers national security and hurts public interests;
- (II) Utilizes techniques or technologies that are prohibited by China from exportation;
- (III) Areas of operation prohibited by Chinese law;
- (IV) Industries that are prohibited from receiving investment by the law of the hosting country, other industries prohibited by the international treaties that China has concluded or taken part in;
- (V) Other circumstances prohibited by law, administrative law, or regulation;

**Article 8** For encouraged outward investment projects, the state shall provide policy support in macroeconomic control, multilateral and bilateral economic and trade policy, diplomacy, finance, taxation and foreign exchange, customs, resources and information, credit and loan, insurance, and bilateral and multilateral cooperation and foreign affairs, etc. Details of specific rules and regulations of supportive policy measures should be formulated and implemented by relevant agencies according to their functions.

- (I) Priority should be given to encouraged outward investment projects in macroeconomic control, domestic industry plan and policy formulation, domestic industry reorganization and structural adjustment, and the initiation of relevant domestic projects.
- (II) Under the condition of upholding market economy principles and conforming to WTO plans, necessary financial subsidies, as well as interest subsidies from the treasury on bank loans, shall be provided to projects that meet certain conditions.
- (III) Loans from policy banks should be provided to support encouraged outward investment projects under the condition that such projects meet the requirements for loans.
- (IV) Priority should be given to encouraged outward investment projects in the examination and approval of outward investment projects and establishment of overseas enterprises with outward investment.

(V) Priority and support should be given to encouraged outward investment projects in the use of foreign exchange.

(VI) For those who export equipment and parts etc. as physical goods investment, tax rebates (waivers) should be given according to the national universal export rebate policy.

(VII) Priority should be given to encouraged outward investment projects in providing services in overseas financing, investment consulting, risk assessment, risk control, and investment insurance, etc.

(VIII) Convenience and assistance should be provided to encouraged outward investment projects in information exchange, consular protection, customs exit and entry of personnel, expatriate personnel approval, registration and domestic coordination of import-export operation rights, international communication, etc. Priority should be given to encouraged outward investment projects to promote and support such projects under bilateral and multilateral cooperation mechanisms between governments and government agencies.

**Article 9** For prohibited outward investment projects, the state does not grant approval and will take measures to prevent and stop such projects; for allowed outward investment projects, the state in principle does not grant the first five favorable policy support measures under Article 8.

**Article 10** The examination and approval documents or filing documents for outward investment projects and the examination and approval, as well as authorization documents for establishing overseas enterprises with outward investment should be copied to departments in charge of diplomacy, development and reform, finance, commerce, customs, taxation, foreign exchange administration, and relevant industries, as well as financing agencies. Such documents are among the references that relevant departments and agencies use in checking and ratifying favorable policies.

**Article 11** This policy shall come into force as of the date of promulgation.

#### **Appendix:**

#### **Catalogue of Industries for Guiding Outward Investment**

#### **Catalogue of Encouraged Outward Investment**

##### **I. Agriculture, forestry, animal husbandry and fishery industries**

1. Planting of natural rubber
2. Planting of oil-seeds, cotton, and vegetables
3. Harvesting, transportation and cultivation of timber
4. Animal husbandry, especially breeding of quality varieties of breeder animals, breeder birds and aquatic offspring
5. Ocean fishery, including ocean fishing and ocean mariculture

##### **II. Mining and quarrying industries**

1. Prospecting and exploitation etc. of petroleum and natural gas, and service activities for such purposes
2. Prospecting, exploitation, and beneficiation of iron, manganese, and chromium ores
3. Prospecting, exploitation, and beneficiation of copper, bauxite ores, lead, zinc, nickel, cobalt, titanium, vanadium, niobium, tin, etc.
4. Prospecting, exploitation, and beneficiation of gold, silver, and other precious metal ores

5. Prospecting, exploitation, beneficiation, and refining of natural uranium ore
6. Exploitation and beneficiation of potassium salt, phosphate sulfur, boron ore, and important special non-metal ores
7. Exploitation and washing of coal
8. Prospecting and exploitation of such unconventional oil resources as oil sand, oil shale, and heavy oil
9. Prospecting and exploitation of diamond and graphite, etc.

### III. Manufacturing industries

1. Spinning production, machine-woven products, knitwear, braided products, non-woven products, and their printing, dyeing, sorting, and processing
2. Processing of woven clothes, processing and production of shoes and hats made from all sorts of woven fabrics.
3. Production of all sorts of chemical fibers and polyesters
4. Processing of timber, including processing of the following primary categories: wood chips, sawn timber, man-made boards, furniture, floor, and other wood and bamboo products
5. Manufacturing of paper and pulp
6. Assembling and manufacturing of agricultural machines; assembling and manufacturing of forestry machines; research, development, and manufacturing of construction machines; assembling and manufacturing of machines, equipment, and parts for weaving, clothing, chemical fibers
7. Manufacturing of ethylene and downstream products of ethylene, manufacturing of aromatic hydrocarbon and pure terephthalic acid (PTA)
8. Manufacturing of chemical engineering products for which advanced technologies cannot be acquired domestically, including engineering plastic and specialized chemical raw materials, etc.
9. Manufacturing of potassium fertilizers, nitrogen fertilizers, phosphate fertilizers, and compound fertilizers
10. Manufacturing in the medicine and pharmaceutical field, primarily: processing and production of chemical medicine ingredients and prepared chemical medicine, research and development of biomedical technologies, manufacturing of biomedicines and biological products
11. Production of sintered ore, pellet ore, and ferrochrome
12. Smelting of copper, aluminum (including the production of aluminum oxide), nickel, and titanium
13. Whole-satellite manufacturing of high-capacity civil communications satellites and mobile communications satellites
14. Manufacturing, research, and development of numerical-control machine tools
15. Large-scale and new-type dry process of cement manufacturing, float glass manufacturing, manufacturing of building, bathroom and ceramic products, exploitation of stone, and processing and manufacturing of plastic, steel, etc.
16. Assembling and manufacturing of measuring devices, bearings, and instruments
17. Passenger vehicle products (including engine products that employ advanced technologies), specialized vehicle products, automatic transmission products with over five shift levels or CVT, functional automobile electronic products



18. Assembling and production of household electronic products, electrical products, batteries, and lighting fixtures

19. Development, processing, and production of electronic information products, including development, processing, and production of communications equipment and products

#### **IV. Service and other industries**

1. Global marketing network

2. Ocean freight transportation

3. Construction and operation of communications network

4. Software development and application service

5. Research of new and high technologies and new and high tech products

6. Trans-border highway and railroad transportation, and construction and operation of trans-border highways, railroads, and bridges

7. Journalism, radio programs, films, television programs, and the spread of culture and art that increases publicity of the Chinese culture

#### **Catalogue of Prohibited Outward Investment Industries**

##### **I. Agriculture, forestry, animal husbandry and fishery industries**

Cultivation of China's rare precious breeds (including quality genes in plant industry, forestry, husbandry and aquatic products industry)

##### **II. Manufacturing industries**

1. Processing of green tea and special tea with China's traditional crafts (famous tea, dark tea, etc.)

2. The application of traditional Chinese techniques of preparing medicine using small pieces ready for decoction, and the manufacture of products using the secret recipes of traditional Chinese medicines.

##### **III. Social service industries**

1. Gambling industry (including horse racing tracks for gambling)

2. Pornography and prostitution

##### **IV. Other Industries**

1. Utilizes techniques or technologies that are prohibited by China from exportation

2. Other industries prohibited by Chinese law and regulations

3. Industries protected by the destination country or region of the investment

4. Industries prohibited by the state or international treaties that China has concluded or taken part in.

## **26. *Opinions of the State Administration of Taxation Upon Doing Well in the Taxation Service and Management for the Overseas Investments of Chinese Enterprises* (State Administration of Taxation, March 2007)**

Source: MOFCOM website. Retrieved from [http://www.fdi.gov.cn/pub/FDI\\_EN/Laws/GeneralLawsandRegulations/MinisterialRulings/P020070522587253907911.pdf](http://www.fdi.gov.cn/pub/FDI_EN/Laws/GeneralLawsandRegulations/MinisterialRulings/P020070522587253907911.pdf)

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The state taxation bureaus and local taxation bureaus of each province, autonomous region, municipality directly under the Central Government, and city specifically designated in the state plan, for the purpose of implementing the instructions and ideas of the Central Government and the State Council regarding the encouragement and regulation of the overseas investments of Chinese enterprises, and exercising the functions of tax[ation], as regards doing well in the taxation service and management for the overseas investments of Chinese enterprises, we hereby put forward the following opinions:

### **1. The important role th[at] tax[ation] plays in the encouragement and regulation of overseas investments of Chinese enterprises shall be sufficiently realized**

The Central Government and the State Council, in light of the new tendency for opening to the outside world and the overall situation for China's economic development, makes the ["Going Global"] strategy for encouraging and regulating overseas investments of Chinese enterprises, which is an important strategic measure and favours making full use of both international and domestic resources and markets, widening the room for development of national economy, developing Chinese enterprises in furious international competition, and ensuring a sustainable and fast development of national economy. Taxation is an important means for structuring incomes, regulating the economy and adjusting allocation. It plays an important promotional role in encouraging and regulating [the] overseas investments of Chinese enterprises. In recent years, for the purpose of cooperating with the implementation of the ["Going Global"] strategy, China has constantly improved its tax policies, constituted and carried out the interim measures for calculating and collecting taxes on overseas incomes, and has preliminarily set down the taxation management rules for the overseas investments of Chinese enterprises, made more effort [to] conclude and carry out tax treaties, set up the mechanism [for] exchanging tax-related information, regulated mutual negotiation procedures, provided Chinese overseas investment enterprises with good taxation services on settling tax disputes, and protected the interests of such enterprises [in a preferable way]. However, in comparison with the requirements for encouraging and regulating the overseas investments of Chinese enterprises and administrating tax scientifically and carefully, the taxation service and management on the overseas investments of Chinese enterprises still have a certain gap, and thus need further improving and regulating. Therefore, the taxation authorities at each level shall further improve the awareness of the importance of taxation service and management on the overseas investments of Chinese enterprises, and shall, according to the requirements for optimizing services, improving policies, regulating management and reinforcing cooperation, strengthening organization and leadership, specify functions, adopt practical measures, and do well in the related work.

### **2. Providing good taxation services for Chinese enterprises' overseas investments**

[Because] the strategy of ["Going Global"] is in the initial stages [of implementation] by China, and the overseas investments and the anti-risk ability of Chinese enterprises are rather weak, the taxation authorities at each level shall comply with the principle of conducting management [of] the services and embodying the services in the management, provide a good taxation environment for Chinese overseas investment enterprises in accordance with their requirements for taxation services, and have taxation work defer to and serve for the overall condition of China's strategy of ["Going Global"].

(1) Constituting uniform taxation service guidelines for Chinese enterprises' overseas investments. For encouraging and regulating Chinese enterprises' overseas investments, the aforesaid uniform taxation service guidelines will play an important guiding role, which mainly include: tax treaties concluded between the governments of China and foreign countries as well as the interpretations thereof; current tax policies and taxation administrative provisions of China concerning overseas investments and the rendering of labour services abroad; tax systems; and foreign countries' laws on the administration of tax levying. The aforesaid uniform taxation service guidelines will focus on offering countermeasures for tax-related disputes occurring when Chinese enterprises invest overseas and render labour services abroad, the deduction measures when calculating and collecting taxes on overseas incomes, measures for reducing and exempting overseas taxes, as well as measures for making up the losses from overseas businesses, etc. The State Administration of Taxation will take charge of Constituting uniform normalized taxation service guidelines for Chinese enterprises' overseas investments, and all regions may, in light of their respective actuality and by referring to the said uniform taxation service guidelines, constitute more pertinent service guidelines.

(2) Smoothing out the tax propaganda and consultancy channels for Chinese enterprises' overseas investments. The State Administration of Taxation has opened a special column for propagandizing the tax for Chinese enterprises' overseas investments at its portal so as to publicize its taxation service guidelines; and all state taxation bureaus and local taxation bureaus at the provincial level shall open a corresponding special propaganda and consultancy column at their respective portals to help Chinese enterprises know [in a timely manner] and grasp the tax-related laws, regulations, measures for administrating tax collection for overseas investments, and conduct taxation guidance for Chinese enterprises' overseas investments. A special consultancy seat may be opened by any region with a large number of Chinese overseas investment enterprises at the comprehensive service window in its tax service hall, to provide the enterprises with fast, convenient and professional taxation consultancy services.

(3) Reinforcing taxation tutorship for Chinese overseas investment enterprises. The taxation authorities at each level shall conduct various forms of taxation tutorship, and on a regular basis, hold special taxation trainings or special policy consultation meetings to answer tax questions that concern Chinese overseas investment enterprises and provide more pertinent taxation services for such enterprises. Tax functionaries in the competent enterprise taxation authority shall regularly visit such enterprises, [learn about] and answer their tax problems [that they have] encountered in the process of their overseas investments.

### **3. Implementing and perfecting tax policies for Chinese enterprises' overseas investments**

The implementation and perfection of taxation policies for Chinese enterprises' overseas investments [are] important measures for safeguarding the encouragement and regulation of Chinese enterprises' overseas investments. [To achieve this], a good job should be done in two aspects as follows:

(1) Making more efforts to implement the tax policies for Chinese enterprises' overseas investments. Each region shall, in accordance with the *Income Tax Law on Foreign-invested Enterprises and Foreign Enterprises* and the detailed rules for the implementation thereof, the *Interim Regulation Concerning the Enterprise Income Tax* and the detailed rules for the implementation thereof, the tax treaties and the related provisions of foreign countries on calculating and levying incomes taxes, conduct an inspection on the implementation of related tax policies for Chinese enterprises' overseas investments, seriously implement the policies for calculating overseas incomes, making up the losses, calculating taxable incomes, deducting overseas taxes as well as reducing and exempting overseas taxes, etc., and handle the problems of non-fulfillment and ineffective fulfillment; and as regards the goods purchased by Chinese overseas investment enterprises and shipped abroad for investments, each region shall, according to current provisions on the export tax refund, handle the export tax refund [in a timely way].

(2) Reinforcing the investigation and research, and perfecting the related tax policies. Each region shall increase the investigation and research efforts for the implementation conditions of current tax policies for overseas investments, including the business situation for overseas investments, the implementation of related tax policies, particularly, the problems faced during the implementation, the reasons for such problems, the settlement opinions and suggestions, and shall report them to the State Administration of Taxation in a timely manner.

#### **4. Regulating and strengthening the administration of tax collection for Chinese enterprises' overseas investments**

As regards Chinese overseas investment enterprises, each region shall control its domestic tax sources and, at the same time, adopt measures for reinforcing the administration of its overseas tax sources, as well as set down and implement the normalized tax management rules and operational rules.

(1) Setting down operational rules for administrating tax collection on Chinese enterprises' overseas incomes. The State Administration of Taxation will constitute the operational rules for administrating tax collection on overseas incomes and guide the grass-roots taxation authorities to conduct the work according to current overseas income tax policies and management requirements as well as the features of the occurrence of overseas incomes. Each region shall set down specific implementation measures by considering their respective situation.

(2) Regulating and strengthening the permanent household management. In accordance with legal provisions, an enterprise shall, when making any overseas investment, go through the tax alteration registration in time at the competent tax authority; and each region shall, on the basis of comprehensively changing tax registration certificates, conduct the inspections of the conditions on going through the tax registration by Chinese overseas investment enterprises, keep informed of the enterprises' overseas investments, and desist [from] collecting or administrating taxes by omission.

(3) Regulating and strengthening the declaration of overseas incomes. Chinese overseas investment enterprises shall, in their annual tax declarations, exactly reflect their overseas business profits, dividends, interests, royalties, property proceeds and other incomes; when making annual declaration of income taxes, such enterprises shall report to the competent taxation authority the organizational structure and business situation, financial systems, financial statements for its overseas investment as well as the account auditing report made by the certified accountants of the country where the investment is [placed]. Each region shall urge the enterprises to fulfill the obligation of reporting related materials and making tax declaration in time.

(4) Regulating and strengthening taxation inspection of overseas income. [Regarding the] main contents and features of the taxation administration of Chinese enterprises' overseas investments, all regions shall constitute operational rules for overseas income tax payment evaluation and taxation inspection, find out and deal with tax risks in Chinese enterprises' overseas investments in a timely manner; [at the same time, they] shall make more efforts on the anti-tax avoidance of Chinese overseas investment enterprises, and focus on the audit of the income from tax "paradises" and overseas subsidiaries subject to Chinese parent companies.

#### **5. Reinforcing the coordination and cooperation with all departments concerned**

The taxation service and management on Chinese enterprises' overseas investments involve the coordination and cooperation with plural internal departments of taxation authorities [and] cannot run without the care and support of departments concerned in the governments at each level, and still need the support and coordination of the taxation authorities around the world and related international organizations. [In order to do] a good job in the taxation service and management regarding the overseas investments of Chinese enterprises, the reinforcement of departmental cooperation and even international cooperation plays an important role.

(1) Reinforcing the internal cooperation with taxation authorities. [Because]the taxation service and management on Chinese enterprises' overseas investments involve several internal departments of taxation authorities, the leaders at each level shall pay more attention, make overall plans and consider each factor, divide their work reasonably and specify their duties. [In addition], the international taxation management department shall take the lead and the functions of other departments shall be exerted, so as to form a working situation [in which] all departments concerned are of one mind and make concerted efforts.

(2) Reinforcing the cooperation with governmental departments concerned. The taxation authorities at each level shall set up an information communication mechanism with the departments of commerce, foreign exchange, development and reform, customs, and trade promotion, etc., so as to regularly exchange information on Chinese enterprises' overseas investments and coordinate to reinforce cooperation with other departments.

(3) Reinforcing international taxation cooperation. The State Administration of Taxation will further strengthen the cooperation with and actively exchange information with the taxation authorities of the countries where Chinese enterprises invest; build a mutual aid mechanism of tax collection administration with the countries where many Chinese enterprises invest, conduct taxation investigations and the evidence obtaining work on Chinese enterprises' overseas investments through authorized delegates' visits and taxation inspections for the same period; and will also reinforce the cooperation with international organizations such as UNDP and OECD, and bring into full play such international conferences and mechanisms as the SGATAR meeting and the meeting of tax directors of 10 countries China has joined in. All regions shall [expediently] provide the State Administration of Taxation with the tax information and materials, submit the business demands for international taxation cooperation, and do well in all work in relation to international taxation cooperation in light of the uniform requirements made by the State Administration of Taxation.

All regions shall, prior to the end of October 2007, report [their] implementation of the present Opinions to the State Administration of Taxation (International Taxation Department).

## ***27. Adjusting the Relevant Matters on the Examination and Approval of Overseas Investment (MOFCOM, December 2007)***

Retrieved from [http://www.cicpa.org.cn/Column/Industry\\_goout/Macro\\_information/Policy\\_Information/200807/t20080709\\_13744.htm](http://www.cicpa.org.cn/Column/Industry_goout/Macro_information/Policy_Information/200807/t20080709_13744.htm)

English translation purchased from Chinalawinfo

### **Notice of the General Office of the Ministry of Commerce on Adjusting the Relevant Matters on the Examination and Approval of Overseas Investment**

The competent commerce authorities of all provinces, autonomous regions, municipalities directly under the central government, municipalities specifically designated in the state's planning, and Xinjiang Production and Construction Corps:

To boost the streamlining of overseas investment and improve work efficiency, the Ministry of Commerce will extend the scope of countries that shall be examined and approved by the competent commerce authorities of the provinces, autonomous regions, municipalities directly under the central government, and municipalities specifically designated in the state's planning ("local competent commerce authorities" below) entrusted by the Ministry of Commerce, where local enterprises may set up branch entities, and simplify the work procedures for examination and approval. The relevant matters are hereby notified to you as follows:

I. An overseas branch entity ("overseas entity" below) shall refer to an entity that is set up overseas by a domestic enterprise and is not a legal person, i.e., a representative office, office, project department, subsidiary company, etc.

II. The Ministry of Commerce entrusts local competent commerce authorities to examine and approve the setup of overseas entities by local enterprises in countries (or regions) other than those with which China do not have diplomatic relations and Iraq, Afghanistan and the Democratic People's Republic of Korea.

III. For overseas entities to be set up in countries with which China does not have diplomatic relations and Iraq, Afghanistan and the Democratic People's Republic of Korea, the local competent commerce authorities shall forward the application to the Ministry of Commerce for examination and approval, and issue the certificates of approval to the applying local enterprise once the application has been approved; for overseas entities to be set up in other countries (regions), after examining and approving the application, the local competent commerce authorities shall directly issue the certificates of approval to the applying local enterprises.

IV. The following principle shall apply to the coding of an "Approval Certificate of an Overseas Branch of a Chinese Enterprise": area code + year + 5-digit sequence number. For example, the code of a certificate in Beijing shall be 1100200800001.

V. The competent local commerce authorities shall require local enterprises to standardize the names of overseas entities to be set up. When local enterprises file their applications, the names of overseas entities to be set up shall include such words as representative office, office, project department, subsidiary company, etc.

VI. To facilitate the timely acquisition of information on the setup of overseas entities, the local competent commerce authorities must submit information on overseas entities approved to be set up to the Ministry of Commerce in the form of a formal document at the end of each quarter.

VII. Other matters that need attention on the setup of overseas entities shall refer to the "Provisions on the Examination and Approval of Investments to Open and Operate Enterprises Abroad" (Ministry of Commerce Year 2004 Order No. 16) and be implemented accordingly.

VIII. This Notice shall come into force as of January 1, 2008.

General Office of the Ministry of Commerce of the People's Republic of China, December 19, 2007

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## **28. Measures for Overseas Investment Management (MOFCOM, March 2009)**

Source: Procedural Law Research Institution at China University of Political Science and Law. Retrieved from [http://www.procedurallaw.cn/english/law/200904/t20090402\\_202192.html](http://www.procedurallaw.cn/english/law/200904/t20090402_202192.html)

### **Chapter I: General Provisions**

**Article 1** To promote and regulate overseas investment, these Measures are formulated according to the Decision of the State Council on Setting Administrative Licensing for Necessarily Retained Matters Subject to Administrative Examination and Approval.

**Article 2** The term "overseas investment" as mentioned in these Measures means that an enterprise legally established in China (hereinafter referred to as the "enterprise") sets up a new non-financial enterprise overseas or acquires the right to own, control or manage an existing non-financial enterprise overseas in the way of merger or acquisition.

**Article 3** Enterprises making overseas investment shall earnestly learn and abide by the relevant domestic and foreign laws, regulations, rules and policies, and follow the principle of "mutual benefit and win-win."

**Article 4** The Ministry of Commerce shall be responsible for administering and supervising overseas investment. The competent departments of commerce of the provinces, autonomous regions, municipalities directly under the Central Government, cities under separate state planning and Xinjiang Production and Construction Corps (hereinafter referred to as the “provincial commerce departments”) shall be responsible for administering and supervising the overseas investment within their respective administrative regions.

## **Chapter II: Approval**

**Article 5** The Ministry of Commerce and the provincial commerce departments shall apply an approval system to enterprises’ overseas investment. The Ministry of Commerce shall maintain an “Overseas Investment Management System” (hereinafter referred to as the “system”). An Enterprise Overseas Investment Certificate (hereinafter referred to as the “Certificate,” see Annex 1 for its format) shall be issued to an approved enterprise. The Certificates shall be uniformly printed and coded by the Ministry of Commerce.

**Article 6** An enterprise making any of the following overseas investments shall submit the application materials according to Article 12 of these Measures, and obtain the approval of the Ministry of Commerce according to Article 13 of these Measures:

1. Making overseas investment in a country which has not established a diplomatic relationship with China;
2. Making overseas investment in a specific country or region (the list of such countries or regions shall be determined by the Ministry of Commerce in conjunction with the Ministry of Foreign Affairs and other relevant departments);
3. Making overseas investment with the amount of investment of the Chinese party being US\$100 million or more;
4. Making overseas investment which involves the interests of multiple countries or regions; or
5. Setting up a special-purpose company overseas.

**Article 7** A local enterprise making any of the following overseas investments shall submit the application materials according to Article 12 of these Measures, and obtain the approval of the provincial commerce department according to Article 14 of these Measures:

1. Making overseas investment with the amount of investment of the Chinese party being US\$10 million up to US\$100 million;
2. Making overseas investment in the field of energy or minerals; or
3. Making an overseas investment which needs to attract capital from within China.

**Article 8** An enterprise making any overseas investments other than those prescribed in Articles 6 and 7 of these Measures shall submit an Application Form for Overseas Investment (hereinafter referred to as the “Application Form,” see Annex 2 for its format), and handle the approval formalities according to Article 16 of these Measures.

**Article 9** Where the overseas investment of an enterprise falls under any of the following circumstances, the Ministry of Commerce or the provincial commerce department shall disapprove it:

1. Endangering the state sovereignty, national security and public interests of China or violating a law or regulation of China;
2. Damaging the relationship between China and a relevant country or region;
3. Likely violating any international treaty concluded by China with a foreign party; or
4. Involving any technology or goods prohibited by China from importation.

The economic and technical feasibility of an overseas investment shall be the sole responsibility of the enterprise.

**Article 10** Before the Ministry of Commerce approves an overseas investment prescribed in Article 6 of these Measures, the opinion of (the economic and trade counselor's office of) the embassy or consulate of China in the foreign country or region shall be solicited. If a central enterprise is involved, the Ministry of Commerce shall be responsible for soliciting the opinion; if a local enterprise is involved, the provincial commerce department shall be responsible for soliciting the opinion.

To approve an overseas investment prescribed in paragraph 2 of Article 7 of these Measures, the provincial commerce department shall solicit the opinion of (the economic and trade counselor's office of) the embassy or consulate of China in the foreign country or region; to approve any other overseas investment, the provincial commerce department may, as the case may be, solicit the opinion of (the economic and trade counselor's office of) the embassy or consulate of China in the foreign country or region.

**Article 11** To solicit opinions, the Ministry of Commerce or the provincial commerce department shall provide (the economic and trade counselor's office of) the embassy or consulate of China in the foreign country or region with the basic information on the investment and other relevant information.

The (economic and trade counselor's office of the) embassy or consulate of China in the foreign country or region shall put forward its opinion in such respects as the security status of the host country and the impact of the investment on the bilateral political, economic and trade relationships, and make a reply within 10 work[ing] days after receiving the letter of request for opinion.

**Article 12** An enterprise making any overseas investment prescribed in Article 6 or 7 of these Measures shall submit the following materials:

1. An application form, which shall mainly cover the name, registered capital, amount of investment, scope of business and duration of business of the overseas enterprise, an explanation of sources of investment capital, the specific contents of the investment, the equity structure, the analysis and assessment of the investment environment, and a statement of lack of any of the circumstances prescribed in Article 9 of these Measures;
2. A photocopy of the business license of the enterprise;
3. The bylaw of the overseas enterprise and the relevant agreement or contract;
4. The approval or filing document issued by the relevant state department;
5. A Pre-report on Overseas Merger or Acquisition (see Annex 3 for its format) if it is an overseas investment in the category of merger and acquisition; and
6. [O]ther documents as specified by the competent department.

**Article 13** To make any overseas investment prescribed in Article 6 of these Measures, a central enterprise shall directly apply to the Ministry of Commerce, while a local enterprise shall apply to the Ministry of Commerce through the provincial commerce department at the place where the enterprise is located.

The provincial commerce department shall, within 10 work[ing] days after receiving the application (excluding the time needed for soliciting the opinion of (the economic and trade counselor's office of) the embassy or consulate of China in the foreign country or region), make a preliminary examination of the authenticity of the application materials submitted by the enterprise and whether the enterprise falls under any of the circumstances prescribed in Article 9 of these Measures, and after approving the application, submit its preliminary examination opinion and all application materials to the Ministry of Commerce.

The Ministry of Commerce shall, within five work[ing] days after receiving the application submitted by a provincial commerce department or a central enterprise, decide whether to accept it or not. If the application materials are incomplete or not prepared in the statutory form, the Ministry of Commerce shall notify the applicant within five



work[ing] days of all necessary supplements and corrections at one time. If it decides to accept the application, it shall make a decision on approval or [non]-approval within 15 work[ing] days after acceptance (excluding the time needed for soliciting the opinion of (the economic and trade counselor's office of) the embassy or consulate of China in the foreign country or region).

**Article 14** To make any overseas investment prescribed in Article 7 of these Measures, an enterprise shall apply to the provincial commerce department.

The provincial commerce department shall, within five work[ing] days after receiving an application, decide whether to accept it or not. If the application materials are incomplete or not prepared in the statutory form, the provincial commerce department shall notify the applicant within five workdays of all necessary supplements and corrections at one time. If it decides to accept the application, it shall make a decision on approval or [non]-approval within 15 work[ing] days after acceptance (excluding the time needed for soliciting the opinions of (the economic and trade counselor's office of) the embassy or consulate of China in the foreign country or region).

**Article 15** Where an overseas investment prescribed in Article 6 or 7 of these Measures is approved, the Ministry of Commerce or the provincial commerce department shall make a written approval decision and issue a Certificate. In the case of [non]-approval, the Ministry of Commerce or the provincial commerce department shall notify the applicant in writing of the [non]-approval, reasons for the [non]-approval and its right to apply for administrative reconsideration or bring an administrative lawsuit according to law.

**Article 16** To make an overseas investment prescribed in Article 8 of these Measures, an enterprise shall handle the approval formalities according to the following procedure:

The head office of a central enterprise shall complete and print out an application form through the "system" as required and submit it to the Ministry of Commerce for approval. A local enterprise shall complete and print out an application form through the "system" as required and submit it to the provincial commerce department for approval.

The Ministry of Commerce or the provincial commerce department shall make an examination within three work[ing] days after receiving the application form, and, if the application form is properly completed and in the statutory form, issue a Certificate.

**Article 17** Where two or more enterprises jointly invest in the establishment of an overseas enterprise, the largest shareholder shall be responsible for handling the approval formalities after receiving the written consent of other investors. The Ministry of Commerce or the provincial commerce department at the place where the largest shareholder is located shall send a copy of the approval document to the provincial commerce department at the place where any other investor is located.

**Article 18** Before approving an overseas investment in the category of prospecting and development of mineral resources, the Ministry of Commerce or the provincial commerce department shall solicit the opinions of the relevant chamber of commerce and association in China as references for making a decision on approval or [non]-approval.

### **Chapter III: Modification and Termination**

**Article 19** Where, after an overseas investment application is approved, any matter in the original application changes, the enterprise shall apply to the original approving organ for handling the approval formalities for modification. Where the shares of the overseas enterprise are assigned between enterprises, the assignee shall be responsible for apply for handling the modification formalities, and the Ministry of Commerce or the provincial commerce department at the place where the assignee is located shall send a copy of the relevant approval document to the provincial commerce department at the place where any other shareholder is located.

**Article 20** Where an enterprise terminates an approved overseas investment, it shall file a report with the original approving organ and surrender the Certificate. The original approving organ shall issue a letter of filing for the enterprise to handle the relevant formalities at the foreign exchange administrative department and other relevant departments. The enterprise and its affiliated overseas enterprise shall handle the deregistration formalities according to the laws of the place where the overseas enterprise is located.

The term “termination” means that an approved overseas enterprise does not exist anymore or [that] no enterprise of China owns any right or interest such as equities in an approved overseas enterprise.

#### **Chapter IV: Code of Conduct for Overseas Investment**

**Article 21** An enterprise shall objectively assess its own conditions and capabilities and the investment environment of the host country (region), make overseas investment in an active and secure way; and, if there is any qualification requirement in any domestic or foreign law, regulation or rule, shall obtain the relevant certificate.

**Article 22** An enterprise shall name the overseas enterprise established by it according to domestic and foreign laws, regulations and policies. An enterprise which fails to obtain an approval according to the relevant state provisions shall not name its overseas enterprise with such words as “China,” “State” or “National.” An enterprise may pre-register the foreign name of its overseas enterprise in the host country or region before applying for approval.

**Article 23** An enterprise shall put into effect various personal and property safety protection measures, set up an emergency warning mechanism, make an emergency response preparedness plan, and accept guidance from the embassy or consulate of China in the foreign country or region in such respects as preventing emergencies and protecting personal safety.

Where an emergency occurs overseas, an enterprise shall expediently and properly dispose of it, and immediately report it to the embassy or consulate of China in the foreign or region and the competent domestic department of China.

**Article 24** An enterprise shall require the Chinese party’s person in charge of the overseas enterprise to, in a timely manner, register with (the economic and trade counselor’s office of) the embassy or consulate of China in the foreign country or region in person or in a written form such as letter, fax or e-mail.

**Article 25** An enterprise shall report the business operation information and statistical data about its overseas investment to the original approving organ, and ensure the authenticity and accuracy of the reported information and data.

**Article 26** An enterprise shall, before the contract or agreement on overseas investment concluded by it with a foreign party becomes effective, obtain the relevant approval of the competent governmental department.

#### **Chapter V: Management and Services**

**Article 27** The Ministry of Commerce shall be responsible for inspecting and guiding the overseas investment management work of the provincial commerce departments and the head offices of central enterprises.

**Article 28** The Ministry of Commerce shall set up and improve the guidance, promotion and service systems for overseas investment and reinforce public services in conjunction with the relevant departments.

The Ministry of Commerce shall publish a Guide to Overseas Investment and Cooperation Arranged by Country or Region to help enterprises understand the investment environment of the host countries (regions).

The Ministry of Commerce shall publish a Catalogue of Industries Arranged by Country for Guiding Overseas Investment to guide enterprises to make proper overseas investment in the host countries (regions).

The Ministry of Commerce shall assist enterprises in solving their difficulties and problems through the inter-governmental bilateral or multilateral economic, trade or investment cooperation mechanism.

The Ministry of Commerce shall set up an information service system for overseas investment and cooperation to provide information services in statistics, investment opportunities, investment obstacles and pre-warnings for enterprises to make overseas investment.

**Article 29** An enterprise shall, after obtaining the approval of its overseas investment, handle the foreign exchange, bank, customs, foreign affairs and other relevant formalities upon the strength of the Certificate, and enjoy the relevant policy support of the state.

**Article 30** Where an enterprise, within two years from the day of obtaining the Certificate, fails to complete the relevant legal formalities in the host country or region or fails to handle the domestic formalities at the relevant departments of China as prescribed in Article 29 of these Measures, the original approval document and the Certificate shall automatically become invalid, and the Certificate shall be surrendered to the original approving organ. If the enterprise still needs to make overseas investment, it shall handle the approval formalities again according to these Measures.

**Article 31** No Certificate shall be forged, altered, leased, lent, or transferred in any form. A Certificate which is modified, invalidated or cancelled shall be surrendered to the Certificate-issuing organ.

#### **Chapter VI: Penalty Provisions**

**Article 32** Where an enterprise provides false application materials or fails to truthfully complete the application form, the Ministry of Commerce or the provincial commerce department shall reject or not approve its application and give it a warning, and may reject its application for any overseas investment for a period of one year. Where an enterprise obtains the approval for overseas investment by providing false materials or any other illicit means, the Ministry of Commerce or the provincial commerce department shall cancel the relevant document, and may reject its application for any overseas investment for a period of three years.

**Article 33** An enterprise which violates these Measures shall not enjoy the relevant policy support of the state on overseas investment within three years.

**Article 34** Where any provincial commerce department fails to approve an application or perform its duties of administration and supervision according to these Measures, the Ministry of Commerce shall order it to make correction and criticize it.

**Article 35** Where any staff member of the competent commerce department fails to perform his or her duties according to these Measures or abuses his or her power, he or she shall be given an administrative sanction according to law.

#### **Chapter VII: Supplementary Provisions**

**Article 36** The provincial commerce department may work out corresponding administrative measures according to these Measures.

**Article 37** The term "special-purpose company" as mentioned in these Measures refers to an overseas company directly or indirectly controlled by an enterprise for the purpose of realizing an overseas listing based on the rights and interests actually owned by it in a domestic company.

**Article 38** Where a public institution with legal person status makes any overseas investment or an enterprise establishes any non-enterprise legal person overseas, these Measures shall apply. Where an enterprise makes investment in the Hong Kong, Macao or Taiwan region, these Measures shall analogically apply.

**Article 39** Where an overseas enterprise controlled by an enterprise makes any overseas reinvestment, within one month after completing the required legal formalities, the enterprise shall file a report with the competent commerce department. If the enterprise is a local enterprise, it shall enter the relevant information into the "system," print out a filing form (see Annex 4 for its format), affix its official seal to the form and file it with the provincial commerce department. If the enterprise is a central enterprise, the head office of the enterprise shall enter the relevant information into the "system," print out a filing form, affix its official seal to the form and file it with the Ministry of Commerce. The filing formalities shall be deemed completed once the enterprise submits the filing form.

**Article 40** The power to interpret these Measures shall remain with the Ministry of Commerce.

**Article 41** These Measures shall come into force on May 1, 2009. The Provisions on the Approval of Matters Relating to the Overseas Investment in Establishing Enterprises (Order No.16 [2004] of the Ministry of Commerce) and the *Notice of the Ministry of Commerce and the Hong Kong and Macao Affairs Office of the State Council on Issuing the Provisions on the Approval of Matters Relating to Mainland Enterprises' Investment in Establishing Enterprises in the Hong Kong Special Administrative Region and the Macao Special Administrative Region* (No.452 [2004] of the Ministry of Commerce) shall be abolished simultaneously. For any discrepancy between the relevant previous provisions and these Measures, these Measures shall prevail.

## *Section Three: Measures and Documents Relating to Information Gathering and Dissemination<sup>5</sup>*

### **29. Interim Measures for Joint Annual Inspection of Overseas Investment (MOFTEC & SAFE, October 2002)**

Source: MOFCOM website. Retrieved from [http://www.fdi.gov.cn/pub/FDI\\_EN/Laws/law\\_en\\_info.jsp?docid=51872](http://www.fdi.gov.cn/pub/FDI_EN/Laws/law_en_info.jsp?docid=51872)

Interim Measures for Joint Annual Inspection of Overseas Investment are hereby promulgated and shall be come into force as of the day of January 1, 2003.

The Minister of Ministry of Foreign Trade and Economic Cooperation, Shi Guangsheng

The Minister of the State Administration of Foreign Exchange, Guo Shuqing

October 31, 2002

#### **Interim Measures for Joint Annual Inspection of Overseas Investment**

##### **Chapter I: General Provisions**

**Article 1** The measures are aimed to enhance the macro-control of, command the variations of, and promote the sound development of overseas investment.

**Article 2** A joint annual inspection is applied to overseas investment by the country. The Ministry of Foreign Trade and Economic Cooperation (hereinafter referred to as the "MOFTEC") and the State Administration of Foreign Exchange (hereinafter referred to as the "SAFE") are responsible for the formulation of annual inspection methods and relevant organization, coordination and supervision work.

**Article 3** Overseas enterprises shall accept annual inspection through their investing principals.

**Article 4** The "overseas enterprises" mentioned in the Measures refer to those enterprises (except financial ones) set up by corporate legal persons (hereinafter referred to as "investing principals") of China.

##### **Chapter II: Time, Items and Procedures of the Annual Inspection**

**Article 5** The department (commissions and bureaus) of foreign trade and economic activities of each province, autonomous region and municipalities directly under the Central Government, and foreign exchange sub-branches take charge of the annual inspection of overseas investment by local enterprises. Central enterprises shall take charge of the annual inspection of their respective overseas investment, except the part concerning foreign exchange, which should be under the foreign exchange bureaus (foreign exchange administrations) of the enterprise's location (hereinafter referred to as "annual inspection agencies").

**Article 6** The work time for annual inspection extends from April 1 to June 15 each year.

<sup>5</sup> See explanatory text at footnote 2.

**Article 7** items subject to annual inspection:

- I. Status of overseas investment.
- II. The appraisal of overseas enterprises by overseas business organizations of China.
- III. Observation of overseas-investment-related regulations of China by investing principals and their overseas enterprises.

**Article 8** Procedures of the annual inspection

- I. The report of annual inspection be co-prepared by MOFTEC and SAFE and be published on the web page for downloading by domestic investing principals (for a sample see Attachment I).
- II. The downloading should be completed within the stipulated time and the information filled in concerning overseas enterprises should be true and valid.
- III. A copy of the finished document should be submitted to the departments (commissions or bureaus) of foreign trade and economic activities and foreign exchange bureaus (foreign exchange administrations).

### **Chapter III: Auditing of Annual Inspection**

**Article 9** The scoring standards specified in the Measures should serve as the basis for determining the grades (1, 2 and 3) as the result of the inspection by annual inspection agencies (see Attachment II for relevant scoring standards).

**Article 10** The certificate of annual inspection uniformly printed by the country is to be sealed for this specific purpose by the annual inspection agencies upon the determining of the grade and then be handed over to the investing principal for keeping (for a sample of the certificate see Attachment III).

**Article 11** The report (a copy) and result of annual inspection should be submitted to MOFTEC by the annual inspection agencies before June 15. A working report on the annual inspection is to be submitted to MOFTEC and SAFE before June 30.

**Article 12** MOFTEC is responsible for notifying finance, customs, taxation, foreign affairs, banking, insurance and other departments of the annual inspection results.

**Article 13** The inspection is carried out regularly each year and there shall be no other focused inspection of any form on overseas investment.

**Article 14** No fee should be charged by any department in the name of annual inspection.

### **Chapter IV: Results of Annual Inspection**

**Article 15** The result is valid for a year since the day of specialized sealing for annual inspection.

**Article 16** The investing principal, after the overseas enterprise obtains the certificate in the annual inspection, should present the certificate of annual inspection to MOFTEC and relevant departments while undergoing procedures concerning overseas investment.

**Article 17** Priority is to be given to Grade 1 obtainer in preferential and supportive treatments concerning overseas investment; priority is also to be given by concerned departments in procedures for foreign exchange, customs, taxation and cross-border movement of staff.

**Article 18** Grade 2 obtainers do not enjoy preferential or supportive treatments.

**Article 19** Grade 3 obtainers do not enjoy preferential or supportive treatments and are allowed a one-year period for rectification and improvement, any new investment is forbidden within one year in case of another Grade 3 at the next annual inspection.

#### **Chapter V: Penalty Provisions**

**Article 20** MOFTEC and relevant departments are to take the following measures for those not declaring for annual inspection:

- I. Suspend accepting applications of the investing principal for overseas-investment-related foreign exchange buying or payment and overseas guarantee.
- II. Do not accept new applications of investing principal for setting up overseas enterprises.
- III. Do not accept applications for sending staff overseas.

**Article 21** Sampling reviews are to be performed by MOFTEC in joint efforts with relevant departments and a time limit can be imposed on relevant agencies for rectification and improvement if the inspection results are not in accordance with the facts. The treatments provided in Article 20 should be executed in case of serious consequences.

#### **Chapter VI: Supplementary Provisions**

**Article 22** The Measures shall serve as reference with regard to the annual inspection of domestic-invested enterprises in Hong Kong, Macao and Taiwan.

**Article 23** "Certificate of approval for overseas processing and assembling enterprises using exported materials or parts" must have the certificate of annual inspection as a precondition for its annual auditing procedures.

**Article 24** The Measures are subject to the interpretation of MOFTEC.

**Article 25** The Measures shall enter into force as of January 1, 2003.

The Ministry of Foreign Trade and Economic Cooperation, the State Administration of Foreign Exchange 2002-10-31

### **30. Notice on the Issuance of the Statistical System for Outward Foreign Direct Investment (MOFCOM, SAFE, National Bureau of Statistics, December 2012)**

Retrieved from: <http://www.mofcom.gov.cn/aarticle/b/bf/201212/20121208507450.html>

Shang He Han [2012] No.1129

Competent commercial authorities of all the provinces, autonomous regions, municipalities directly under the central government, cities specifically designated in the state plan and the Xinjiang Production and Construction Corps, central enterprises:

The Ministry of Commerce, the National Bureau of Statistics and the State Administration of Foreign Exchange, in accordance with the provisions of the Interim Measures for the Administration of Items of Statistical Surveys Conducted by Departments (National Bureau of Statistics Order No. 4 of 1999), amended and supplemented the Statistical System for Outward Foreign Direct Investment issued on December 2010 in light of the reality and characteristics of China's outward investment in the past two years. Major adjustments are as follows:

1. Added the Monthly Statement on the Basic Situation of Cooperation in Outward Investment in Agriculture Conducted by China's Domestic Investors Abroad (outside China) (FDIY3) and the Monthly Statistical Report on China's Overseas Economic and Trade Cooperation Zones (FDIY4).
2. Added the Annual Statement on "the Cultivation of Major Crops Abroad" that reflects the basic situation of cultivation of agricultural crops conducted by China's domestic investors abroad (outside China) (FDIN6).
3. Broke down the "monetary investment" indicator in the Monthly Statement on "Outward Foreign Direct Investment" (FDIY1) into own funds, bank loans and others; changed "other investment" to "investment in intangible assets."
4. Changed the "number of jobs created" indicator in the "Re-Investment by Domestic Investors Through Foreign Enterprises" (FDIN5) to "number of persons employed at the end of the year."
5. Adjusted the Monthly Statement on "Basic Matters Relating to Outward Investment in M&A" (FDIY2) by cancelling indicators such as sellers' situation, mergers and acquisitions by agreement, funding sources for mergers and acquisitions and breaking down the "actual amount of transactions" indicator.
6. Changed the statistical unit of the "number of persons employed at the end of the year" indicator in the "Basic Situation of Domestic Investors" (FDIN1) from "one person" to "one thousand persons."
7. Changed the referential classification of industries domestic investors (overseas enterprises) to the 2011 edition of the Industrial Classification of National Economic Activities (GB / T 4754-2011) of the National Bureau of Statistics.

The amended Statistical System for Outward Foreign Direct Investment is hereby issued to you and shall be implemented starting on January 1, 2013. The Notice of the Ministry of Commerce, the National Bureau of Statistics and the State Administration of Foreign Exchange on the Issuance of the Statistical System for Outward Foreign Direct Investment (Shang He Fa [2010] No. 520) shall be abolished accordingly.

Commerce Department  
National Bureau of Statistics  
State Administration of Foreign Exchange  
December 21, 2012

Attachment: Statistical System for Outward Foreign Direct Investment 2012

### **I. General Information**

(1) In order to reflect the actual situation of China's outward foreign direct investment in an accurate, timely and comprehensive manner, scientifically and effectively organize statistical work for outward foreign direct investment across the country and give full play to the advisory and supervisory role of statistics, this System is hereby formulated in accordance with the Statistics Law of the People's Republic of China and rules for the implementation thereof.

(2) For the purposes of this System, outward foreign direct investment shall mean economic activities in which China's domestic investors set up, hold shares in, take over or acquire foreign (overseas) enterprises by such means as cash, tangible property and intangible assets and own 10 per cent or more of these enterprises' equity and focus on having or controlling powers to operate and manage these enterprises.

(3) This System is applicable to all domestic institutions and individuals carrying out outward foreign direct investment (hereinafter referred to as domestic investors).



(4) The basic task of statistical work for outward foreign direct investment is to reflect the complete picture of China's outward foreign direct investment in a comprehensive, accurate and timely manner through statistical surveys, statistical analysis and provision of statistical data to provide a basis for the state to analyze trends of outward investment, monitor macroeconomic performance, formulate promotion-oriented policies and implement supervision and administration, and establish China's capital project early warning mechanism.

(5) Unified leadership, hierarchical administration and submission up through the levels are implemented for statistical work for outward foreign direct investment.

1) The Ministry of Commerce, according to the unified requirements of the National Bureau of Statistics, is responsible for statistical work for outward foreign direct investment across the country, administrating the statistical work for outward foreign direct investment of competent commercial authorities of all the provinces, autonomous regions, municipalities directly under the central government and cities specifically designated in the state plan and central enterprises and comprehensively preparing and summarizing outward foreign direct investment statistics across the country.

2) The State Administration of Foreign Exchange (hereinafter referred to as the SAFE) is responsible for the statistical work for outward foreign direct investment of the financial industry across the country, administrating the statistical work for outward foreign direct investment of domestic investors in the financial industry and comprehensively preparing and summarizing and providing the Ministry of Commerce with outward foreign direct investment statistics of the financial sector.

3) All the provincial competent commercial authorities are responsible for statistical work for outward foreign direct investment in their own administrative regions, administrating the statistical work for outward foreign direct investment of domestic investors in non-financial industries (not including enterprises administrated by the central government in the administrative region, the same below) and comprehensively preparing and summarizing and submitting to the Ministry of Commerce outward foreign direct investment statistics in their own administrative regions.

4) Domestic investors are responsible for managing their own statistical work for outward foreign direct investment, collecting statistics on their overseas direct investment enterprises according to the tabular form prescribed in this System and comprehensively preparing and summarizing and submitting to provincial competent commercial authorities, the Ministry of Commerce and the SAFE their own statistics.

(6) The scope of statistical work for outward foreign direct investment mainly covers all kinds of incorporated or unincorporated overseas direct investment enterprises in which domestic investors own or control 10 per cent or more of the voting power or other equivalent interests outside China through direct investment (hereinafter referred to as overseas enterprises).

Overseas enterprises are mainly divided by method of establishment into overseas subsidiaries, associates and branches.

The contents of statistical work for outward foreign direct investment mainly include: the basic situation of domestic investors; the basic situation of overseas enterprises; investment and profit allocation between domestic investors and overseas enterprises; the import and export of goods realized through overseas enterprises; outward investment in M&A; reinvestment through overseas enterprises; overseas economic and trade cooperation zones; cooperation in outward investment in agriculture, etc.

(7) Indicators of statistical work for outward foreign direct investment mainly include: the amount of outward foreign direct investment; the amount of reverse investment; the net amount of outward foreign direct investment; the actual amount of transactions; total assets; total liabilities; owner's equity; paid-in capital; sales (operating) revenue; total profit; the number of people employed at the end of the year; the amount of exports realized by domestic investors through overseas enterprises; the amount of imports realized by domestic investors through overseas enterprises; the total amount of taxes paid to the host country, etc.

(8) Under this System, statistics are collected and collated by filling out regular statistical statements. Survey forms are divided into annual statements and monthly statements.

The Ministry of Commerce, the National Bureau of Statistics and the SAFE collect and collate important statistical survey items as needed using typical survey methods. Specific methods are formulated separately.

Channels for submission of statistical statements on outward foreign direct investment:

- 1) In cases where the domestic investor is a central enterprise or entity, statistics are directly submitted to the Ministry of Commerce.
- 2) In cases where the domestic investor is a financial enterprise (including bank, insurance company, securities company, fund management company, trust company, finance company, etc.), statistics are directly submitted to the SAFE.
- 3) Other domestic investors submit statistical statements to provincial competent commercial authorities in places where they are located.
- 4) All provincial competent commercial authorities summarize statistics in their own administrative regions (excluding central enterprises) and submit the statistics to the Ministry of Commerce, and simultaneously send a copy thereof to the statistical department at the same level.
- 5) The SAFE is responsible for collecting, checking and summarizing statistics of domestic investors in the financial industry and providing financial statistics on outward foreign direct investment to the Ministry of Commerce.
- 6) The Ministry of Commerce is responsible for summarizing statistics on outward foreign direct investment across the industry and submitting the statistics to the SAFE.

All overseas enterprises involved in domestic investors' outward foreign direct investment submit statistics through channels 1, 2 and 3.

(9) Outward foreign direct investment statistics are published on a regular basis. Statistics used in administration of cooperation in outward investment and provided externally are subject to verification based on statistics published by the Ministry of Commerce, the National Bureau of Statistics and the SAFE.

Annual statistics are published by the Ministry of Commerce, the National Bureau of Statistics and the SAFE in the form of a bulletin before September 30 of the following year; monthly statistics are published by the Ministry of Commerce within 30 days from the end of the month, and the statistics are submitted to the National Bureau of Statistics for the record within 10 days from the date of publication. In the first quarter of each year, the Ministry of Commerce generates preliminary annual statistics on outward foreign direct investment according to monthly statistics with previous year's preliminary statistics as the base period for year-on-year calculation.

Monthly statistics on outward foreign direct investment include reinvestment of monthly profits estimated by the Ministry of Commerce according to reinvestment of the previous year's profits. The Ministry of Commerce allocates reinvestment of profits proportionately to relevant industries, regions and provinces according to the estimates.

The Ministry of Commerce, the National Bureau of Statistics and the SAFE may adjust the current year's monthly data and the previous year's annual report data according to the actual situation of outward foreign direct investment, the final data for the year are subject to verification based on data published in the statistical bulletin.

(10) The submission of statistical statements is postponed accordingly during statutory holidays.

(11) Country (region) codes for statistical use used in this System are derived from the Country (Region) Codes for Statistical Use formulated by the General Administration of Customs.

Corporation codes are supplied according to the Organization Code Certificate of the People's Republic of China issued by technical supervision departments at all levels.

Domestic investors are ascribed to industry categories according to the Industrial Classification of National Economic Activities (GB/T 4754-2011) of the People's Republic of China published by the National Bureau of Statistics, industry categories of overseas enterprises are determined by referring to it.

(12) The Ministry of Commerce is responsible for the interpretation of this System.

(13) This System shall officially come into effect on January 1, 2013, the former Statistical System for Outward Foreign Direct Investment (Shang He Fa [2010] No. 520) shall be abolished simultaneously.

## II. List of Statistical Statements

| STATEMENT NO.                                     | STATEMENT NAME  | REPORTING PERIOD | SCOPE OF STATISTICS                                | SUBMITTED OR PROVIDED BY                       | DATE AND WAY OF SUBMISSION OR PROVISION   | PAGE NO. |
|---|---|------------------|--|--|---|----------|
| <b>(1) Consolidated statements</b>                |   |                  |  |  |   |          |
| The FDI financial N1 statement                    | Flows and Stock of Outward Foreign Direct Investment By Domestic Investors in The Financial Industry(grouped by country and region)                                   | Yearly           | All domestic investors in the financial industry   | State Administration of Foreign Exchange       | Provided to the Ministry of Commerce before July 20 after the end of the current year, paper medium   | 10       |
| The FDI financial N2 statement                    | Flows and Stock of Outward Foreign Direct Investment By Domestic Investors in The Financial Industry (grouped by industrial category of national economic activities) | Yearly           | As above   | As above                                       | As above  | 11       |
| The FDI financial N3 statement                    | Basic Situation of Overseas Enterprises Owned By Domestic Investors in The Financial Industry   | Yearly           | As above   | As above                                       | As above  | 12       |
| The FDI financial Y1 statement                    | Outward Foreign Direct Investment of The Financial Industry (grouped by country and region)   | Seasonally       | As above   | As above                                       | Provided to the ministry of commerce before the 20th after the end of the current quarter, paper medium)  | 12       |
| The FDI financial Y2 statement                    | Outward Foreign Direct Investment of The Financial Industry(grouped by industrial category of national economic activities)   | Seasonally       | As above   | As above                                       | As above  | 14       |
| <b>(2) Statements of units at the basic level</b> |   |                  |  |  |   |          |
| FDIN1   | Basic Situation of Domestic Investors   | Yearly           | All domestic investors in non-financial industries | Domestic investors in non-financial industries | Submitted to provincial competent commercial authorities or the Ministry of Commerce before June 20 after the end of the current year, network transmission | 15       |
| FDIN2   | Basic Situation of Overseas Enterprises   | Yearly           | As above   | As above                                       | As above  | 16       |
| FDIN3   | Investment and Profit Allocation Between Domestic Investors And Overseas Enterprises  | Yearly           | As above   | As above                                       | As above  | 17       |
| FDIN4   | Import and Export of Goods Through Overseas Enterprises   | Yearly           | As above   | As above                                       | As above  | 18       |

|       |   |         |  |  |   |    |
|-------|---|---------|--|--|---|----|
| FDIN5 | Reinvestment By Domestic investors Through Overseas Enterprises | Yearly  | As above   | As above                                       | As above  | 19 |
| FDIN6 | Cultivation of Major Crops Abroad                               | Yearly  | All domestic investors in non-financial industries | Domestic investors in non-financial industries | Submitted to provincial competent commercial authorities or the Ministry of Commerce before June 20 after the end of the current year, network transmission | 20 |
| FDIY1 | Outward Foreign Direct Investment                               | Monthly | As above   | As above                                       | Submitted to provincial competent commercial authorities or the Ministry of Commerce within 10 days from the end of the current month, network transmission | 21 |
| FDIY2 | Basic Matters Relating to Outward Investment in M&A             | Monthly | As above   | As above                                       | As above  | 22 |
| FDIY3 | Cooperation in Outward Investment in Agriculture                | Monthly | As above   | As above                                       | As above  | 23 |
| FDIY4 | Overseas Economic and Trade Cooperation Zones                   | Monthly | As above   | As above                                       | As above  | 24 |

III. Survey Form (omitted)

IV. Appendix (omitted)

V. Explanation of Main Concepts and Indicators

### 1. Outward foreign direct investment

Outward foreign direct investment means economic activities which China's enterprises and organizations (hereinafter referred to as domestic investors) invest in foreign countries, Hong Kong, Macao and Taiwan by means of cash, tangible property and intangible assets and focus on controlling powers to operate and manage (overseas) enterprises. The meaning of outward foreign direct investment is mainly reflected in one economy achieving long-lasting profits by investing in another economy.

### 2. Direct investment enterprises

Overseas enterprises in which domestic investors own or control 10 per cent or more of the voting power (for incorporated enterprises) or other equivalent interests. Overseas enterprises are mainly divided by method of establishment into subsidiaries, associates and branches.

#### 1) Subsidiaries

The domestic investor owns more than 50 per cent of the voting rights of shareholders or members of the overseas enterprise, and has the power to appoint or dismiss major members of administrative, management or supervisory bodies of the overseas enterprise.

2) Associates: The domestic investor owns 10 to 50 per cent of the voting rights of shareholders or members of the overseas enterprise.

3) Branches: The domestic investor's outreach entities that do not have independent legal status (outside China).

Domestic investors' permanent establishment or offices abroad (outside China) are deemed as branches.

### 3. Amount of outward foreign direct investment

Investment made directly in their overseas enterprises by domestic investors during the reporting period, including equity investment, reinvestment of profits and other investment related to the debt transactions between companies.

Outward foreign direct investment by the banking industry only includes equity investment and other investment (namely long-term credits domestic banks have in overseas branches).

1) Equity investment: equity capital domestic investors have in their overseas branches, or their shares in their overseas subsidiaries and associates.

Equity: equal to the "equity" item in balance sheets of overseas enterprises at the end of the reporting year multiplied by the Chinese side's portion of investment (or percentage of shares), a reduction in equity capital in the current period is recorded as a negative flow in the current period.

New equity: equal to an increase in equity of overseas enterprises in the reporting year multiplied by the Chinese side's portion of equity, including equity paid up by domestic investors in the current year and equity gained through conversion of investment earnings. The amount of the equity increase is the difference between the "equity" items in the enterprise's opening and closing balance sheets.

2) Reinvestment of profits: profits that haven't been distributed as dividends by overseas subsidiaries or associates but should belong to domestic investors, and profits that haven't been repatriated to domestic investors by overseas branches.

Reinvestment of profits of the current period: equal to the difference between undistributed profits at the end and beginning of the period calculated according to the percentage of shares held by the Chinese side in balance sheets of overseas enterprises in the reporting year, negative reinvestment of profits of the current period is included in negative flows in the current period.

Reinvestment of profits: equal to undistributed profits at the end of the period calculated according to the percentage of shares held by the Chinese side in balance sheets of overseas enterprises in the reporting year, negative undistributed profits at the end of the period are not included in stock of outward foreign direct investment.

3) Other investment: debt transactions between domestic investors and overseas subsidiaries, branches and associates, including money domestic investors lend to overseas subsidiaries, branches and associates.

Other investment: loans domestic investors provided to overseas subsidiaries, branches and associates in the current period are recorded as an increase in flows and stock of outward foreign direct investment in the current period; repayment of loans borrowed from domestic investors in the current period or previous years by overseas subsidiaries and associates is recorded as a negative flow of outward foreign direct investment, and entails a downward adjustment of the current period's stock.

**4. Amount of reverse investment:** investment in domestic investors made by overseas enterprises to acquire a stake of less than 10 per cent.

**5. Amount of outward foreign direct investment in the current period:** equal to increase in overseas enterprises' equity capital in the reporting period, plus reinvestment of profits in the current period, plus increase in liabilities owed to domestic investors (i.e., loans provided to overseas enterprises by domestic investors in the current period).

Net outward foreign direct investment in the current period ("flow"): equal to increase in overseas enterprises' equity capital in the reporting period, plus reinvestment of profits in the current period, plus increase in liabilities owed to domestic investors (i.e., loans provided to overseas enterprises by domestic investors in the current period), minus reverse investment in domestic investors by overseas enterprises.

**6. Total outward foreign direct investment:** equal to equity at the end of the period calculated according to the Chinese side's proportion of investment in balance sheets of overseas enterprises in the reporting period, plus undistributed profits at the end of the period calculated according to the Chinese side's proportion of investment, plus liabilities owed to domestic investors at the end of the period (i.e., loans provided to overseas enterprises by domestic investors).

Total net outward foreign direct investment ("stock"): equal to total outward foreign direct investment minus total reverse investment in domestic investors by overseas enterprises.

**7. Total assets:** the total value of current assets, fixed assets, intangible assets, long-term investment, projects under construction and other assets possessed by enterprises measured in monetary terms.

**8. Total liabilities:** liabilities borne by enterprises at the end of the reporting period that can be measured in monetary terms and need to be paid with assets or services, including current liabilities, long-term liabilities and other liabilities.

**9. Owners' equity:** economic benefits owners enjoy in corporate assets (calculated according to the proportion of shares), equal to assets minus liabilities, and including paid-in capital (or equity), capital reserves, surplus reserves and undistributed profits.

**10. Paid-in capital:** capital actually contributed to enterprises by investors in accordance with the articles of association or the contract or agreement.

**11. Turnover:** operating revenue realized by enterprises in sales of goods or provision of services and other business operations, including income from principal business operations and income from other business operations.

**12. Total profit:** enterprises' operating results in the reporting period, including operating profits, net investment income and non-operating revenues minus non-operating expenses.

**13. Number of persons employed at the end of the year:** the number of people working and receiving salaries or other forms of remuneration for work at overseas (domestic) enterprises at the end of the reporting year.

Relevant persons employed by overseas enterprises who have signed employment contracts with enterprises in China qualified to undertake cooperation in labour export are not included in the number of persons employed at the end of the year of overseas enterprises.

**14. Total value of exports of goods realized through overseas enterprises:** the total value of all kinds of goods exported through overseas enterprises in the reporting year.

**15. Total value of imports of goods realized through overseas enterprises:** the total value of all kinds of goods imported through overseas enterprises in the reporting year.

**16. Total amount of taxes paid to the host country:** the total amount of taxes actually paid by overseas enterprises in accordance with the laws of the host country or region.

**17. Investment earnings allocated to domestic investors:** earnings allocated to domestic investors by overseas enterprises according to the portion of equity possessed by domestic investors through direct investment, including dividends, reinvestment of profits, interest, etc.

**18. Investment earnings allocated to overseas enterprises:** earnings allocated to overseas enterprises by domestic investors according to the portion of equity possessed by overseas enterprises through direct investment in cases where overseas enterprises make reverse investment in domestic investors, including dividends, reinvestment of profits, interest, etc.

**19. Actual repatriated profits:** the sum of the current period's profits repatriated to domestic investors in the reporting period and the preceding year's profits.

**20. M&A:** mergers and acquisitions. Merger is the act whereby domestic investors (or overseas enterprises established through their direct investment) merge with other independent overseas enterprises abroad (outside China). Acquisition means domestic investors (or overseas enterprises established through their direct investment) purchasing stock or assets of overseas business entities (including projects) by such means as cash or negotiable securities abroad (outside China) in order to obtain ownership of all the assets or an asset of the enterprise or control of the enterprise.

Statistical definition of M&A

- 1) Activities in which domestic investors sign agreements on M&A of overseas business entities (or projects) directly with sellers and implement M&A are included in M&A statistics.
- 2) Activities in which domestic investors sign agreements on M&A of overseas business entities (or projects) with sellers through their overseas enterprises and implement M&A are included in M&A statistics.
- 3) Transfers of equity of overseas enterprises between domestic investors are not included in M&A statistics.

The final percentage of shares held in merged and acquired enterprises (or projects) related in 1) above may not be less than 10 per cent, this limitation does not apply to M&A related in 2).

**21. Actual amount of transactions:** the total amount of money paid to sellers by domestic investors (or their overseas enterprises) under M&A agreements.

**22. Number of persons employed at the end of the month:** the number of people working and receiving remuneration for work at the end of the reporting period.

**23. Cooperation in outward investment in agriculture:** activities in which domestic investors own or control foreign (overseas) enterprises or projects in the agricultural category through direct investment or reinvestment.

**24. Own funds:** funds often held by domestic investors for production and business activities, used at their sole discretion and not needing be repaid.

#### **25. Definition of statistical principles**

1) This system implements the international non-unified system, that is, only statistics on direct investment activities completed by domestic investors in foreign countries, Hong Kong, Macao and Taiwan are collected and analyzed.



## 2) Statistical definition of countries (regions)

Countries (regions) out of which/into which outward foreign direct investment flows are determined according to the host country/country of origin of direct investment system (internationally known as the non-unified system), namely statistics on countries (regions) where subsidiaries, associates and branches for outward foreign direct investment are located.

## 3) Definition of industrial classification of domestic investors and overseas enterprises

Industrial categories of domestic investors are determined by the industry to which the product accounting for the largest share of sales revenue belongs according to the Industrial Classification of National Economic Activities of the People's Republic of China (GB / T 4754-2011, see Appendix I).

## 4) Currency conversion and valuation principles

RMB is the monetary unit for the Basic Situation of Domestic Investors (FDIN1); the U.S. dollar is the common monetary unit for other statements. Non-dollar-denominated items must be converted into U.S. dollars in accordance with exchange rates prescribed in the Table of Exchange Rates of Various Currencies to U.S. Dollar formulated by the State Administration of Foreign Exchange.

Actual transaction price, namely market value, is used as the valuation basis for relevant indicators of operating activities (such as: operating revenue, the total value of exports, the total value of imports, etc.); assets, liabilities, equity and other stock indicators are calculated based on book value.

## 5) Definition of reporting year

Under this System, all years referenced for the submission of data in all statistical statements are calendar years; fiscal years referenced for data of overseas enterprises must be converted to calendar years or data in the latest statement for the fiscal year shall be submitted, and an explanation thereof shall be given in the statement.

## 6) Other statistical definition

A. All investments whereby domestic investors own or control 10 per cent or more of the voting power (for corporative enterprises) or other equivalent interests (for non-corporative enterprises) in overseas enterprises are included in statistics on outward foreign direct investment.

B. Special purpose vehicles or representative offices established to undertake overseas project contracting are included in the scope of statistics on outward foreign direct investment.

C. Loans guaranteed by domestic direct investors obtained by subsidiaries are not included in statistics on outward foreign direct investment.

D. Investments by participating international organizations are not included in statistics on outward foreign direct investment.

E. Cross-border services aimed at providing technologies and charging management fees are not included in statistics on outward foreign direct investment.

F. Overseas enterprises being merged and acquired by enterprises from other countries is recorded as a reduction in domestic investors' outward investment.

G. If there are a number of domestic investors in an overseas enterprise and all hold more than 10 per cent of shares, they may act as submitters to separately submit relevant indicators calculated according to percentages of shares held by them.

H. Investments whereby overseas enterprises hold 10 per cent or more of the shares in domestic investors are not included in reverse investment.

I. Acquisition of 10 per cent or more of the voting power in overseas enterprises by such means as additional investment in the reporting year is included in statistics on outward foreign direct investment of the reporting year; the amount of additional investment is recorded as an increase in the current period's outward foreign direct investment, and the total amount of net direct investment (namely the stock) is calculated according to owners' equity corresponding to their shareholding percentages.

J. The amount of investment in branches is calculated according to the amount of investment in their fixed assets (including land, buildings and other immovable assets).

K. Acquisition of more than 10 per cent of the equity of overseas enterprises by domestic investors through an equity swap is recorded as an increase in the current period's outward foreign direct investment, the loss or reduction of equity of the overseas enterprise due to the equity swap is recorded as a reduction in the current period's outward foreign direct investment.

L. The amount of investment in branches (including those in the financial category) is calculated according to the amount of investment in their fixed assets (including land, buildings and other immovable assets).

M. Deposits placed by domestic banks (or deposit-taking companies) in their overseas branches or subsidiaries are not direct investments.

N. Deposits taken by domestic banks (or deposit-taking companies) through their overseas branches or subsidiaries are not direct investments.

O. Technical reserves placed by domestic insurance companies in their overseas insurance companies (i.e., actual reserve against existing risks, premiums paid in advance, reserve for profitable insurance business and outstanding claims reserve) are not direct investments.

### **31. *Statistical Bulletins of China's Outward Foreign Direct Investment (MOFCOM, annual)***

Source: Ministry of Commerce website. Retrieved from <http://hzs.mofcom.gov.cn/accessory/201109/1316069658609.pdf>

[These texts are annual statistical publications and so are not reproduced here. They contain data on the stocks and flows of Chinese outward foreign direct investment, the sectors in which those investments are made, and the countries receiving the investment. The bulletins also contain information on the sources of the investments, including identifying the major Chinese transnational companies investing abroad].

### **32. Notice on Establishing Data Bank about OFDI Proposals/Circular on Setting up an Information Database of Outward Investment Intention of Enterprises (MOFCOM & NDRC), November 2003)**

Source: Unofficial translation from the Asian Legal Information Institute (AsianLII). Retrieved from <http://www.asianlii.org/cn/legis/cen/laws/cotgootmocosuaidofiioe1287/>

Shang He Zi [2003] No. 39

November 28, 2003

The foreign trade offices (commissions or bureaus) and business affairs offices or bureaus of all provinces, autonomous regions, municipalities directly under the jurisdiction of the Central Governments, and cities directly under the state planning, as well as Xinjiang Production and Construction Corps, and all the enterprises directly under the jurisdiction of the Central Government:

In order to facilitate the implementation of the ["Going Global"] strategy, strengthen services on outward investment information, and find out the trends of outward investment of Chinese enterprises in time, as well as better direct and coordinate relevant work, this Ministry has hereby decided, upon approval, to establish an information database of outward investment intention of enterprises (hereinafter referred to as the "Information Database") on the sub-website of the Department of Foreign Economic Cooperation subject to the government website of the Ministry of Commerce, and hereby make the following notice on relevant matters concerned:

I. The major role of the Information Database to be established shall include: publicizing information on the outward investment intention of the Chinese enterprises, and providing an information platform for various domestic and foreign institutions and enterprises to know each other and communicate with each other, with a view of promoting investment information exchange between the Chinese enterprises and foreign enterprises, and facilitating the development of foreign trade and economic cooperation business of our country. Enterprises applying for participating in the Information Database may download the "Registration Form of Overseas Investment Intention of Enterprises" (see Attachment) from the sub-website of the Department of Foreign Economic Cooperation subject to the government website of the Ministry of Commerce (<http://www.mofcom.gov.cn>), and send it to the departments in charge of foreign trade and economy of the corresponding province or municipality after having it filled out in accordance with facts, annexed seal of the enterprise, and attached necessary materials.

II. Requirements for an enterprise filing an application

1. Economic entities registered within the territory of China (excluding Hong Kong, Macao, and Taiwan Province) according to law, which have the qualifications of a legal entity;
2. The registered capital of the enterprise is not less than CNY10 million Yuan and the enterprise has made profits in three consecutive years; and
3. The amount of foreign intention investment of a single project is more than US\$1 million.

III. The documents required for the application

1. Photocopy of the business license of an enterprise;
2. The financial statement of an enterprise [for] three consecutive years; and
3. Registration Form of Outward investment Intention of Enterprises.

IV. Information Examination and Verification and Release. All the local departments in charge of foreign trade and economy shall pay great attention to the work from the high prospective of facilitating the implementation of the ["Going Global"] strategy, actively diffuse and disseminate to the enterprises the functions and effect of the Information Database on their own initiatives, and earnestly organize the work for application and report, examination and approval, statistics and report of the information on local outward investment intention. For [the] information reported by the enterprises, which comply with the requirements after examination and verification in accordance with prescribed requirements, the departments shall have them collected and classified according to industries, and sen[d] them to the division of research & development on foreign processing under the Department of Foreign Economic Cooperation of the Ministry of Commerce by both email and post, the email addresses are:

hzjg@mofcom.gov.cn; chenwenlin@mofcom.gov.cn

The Ministry of Commerce shall be in charge of publicizing the above-mentioned information in the "Information Database of Outward Investment Intention of Enterprises." In principle, the time for reporting and sending the information shall be the last ten days of May up to the last ten days of November every year, and the time for publicizing the information shall be the last 10 days of June up to the last 10 days of December every year. Whenever necessary, the information may be supplemented or modified irregularly.

The follow-up and statistical work for the investment intention information publicized by each region shall be properly done, and the information shall be verified and updated in time in accordance with the progress of outward investment of enterprises, so as to secure the accuracy and effectiveness of the information.

All the enterprises directly under the jurisdiction of the Central Government shall report and send their information directly to the Ministry of Commerce by the ways mentioned above.

V. The Department of Foreign Economic Cooperation of the Ministry of Commerce shall be in charge of the construction of and supervision over the above-mentioned Information Database. It may, in addition to releasing the above-mentioned information through the government public websites, upon the need of the work, provide such services as the relevant information of different countries on attracting foreign investment, opportunities for enterprise investment negotiation, and training of policies of different countries on foreign investment, as well as providing special knowledge training, etc., and promote the implementation of investment cooperation projects through organizing enterprises to make overseas investigation.

The Ministry of Commerce welcomes all kinds of domestic and foreign organizations, institutions, enterprises and individuals to provide opportunities and assistance to the Chinese and foreign enterprises, and provide investment cooperation information and consultation services.

### **33. *Circular of Distributing Industrial Guidance Catalogue of Investment to Foreign Countries* (MOFCOM & Ministry of Foreign Affairs, August 2004)**

Source: MOFCOM website. Retrieved from [www.english.mofcom.gov.cn](http://www.english.mofcom.gov.cn)

Note by the editors: For text, see Document 14 above.

### 34. *Obstacle Report Rules on the Investment to Different Countries* (MOFCOM, November 2004)

Source: MOFCOM website, Retrieved from <http://english.mofcom.gov.cn/aarticle/policyrelease/domesticpolicy/200411/20041100306760.html>

#### **Chapter I: The Purpose of Working out the Report Rules**

**Article 1** The said Rules are formulated in accordance with Foreign Trade Law, Temporary Rules on the Investigation into Foreign Trade Barrier and related regulations for the purposes of stepping up “Go Global” strategy, [successfully] carrying out follow-up management and service of the investment abroad, safeguarding the investors’ lawful rights and interests, creating a fine environment, [and] promoting the development of the investment abroad.

**Article 2** Implementing Obstacle Report Rules on the Investment in Different Countries means Chinese commercial organs, chambers of commerce and enterprises abroad reflect all obstacles, barriers and related problems [that] Chinese enterprises [encounter] in their investment to host countries (regions) by writing reports annually and at irregular intervals. The reports will be used by the Ministry of Commerce as one of the basic materials to [develop] and distribute [an] annual Report on The Environment of Trade and Investment in Different Countries ... to the competent department[s] and domestic department[s] concerned for reference. Domestic departments concerned should safeguard the lawful rights and interests of Chinese enterprises by multilateral and bilateral mechanism[s] on the basis of keeping abreast of overall obstacles and problems [that] Chinese enterprises [encounter] in the investment abroad.

#### **Chapter II: Main Parts of the Report**

**Article 3** The main parts of the report are all economic and commercial organs sent abroad, Chinese invested enterprises, chambers of commerce, associations abroad, Chinese invested enterprises and branches abroad (hereinafter referred to as “Chinese invested enterprises”) and their domestic investors. They should report to the Ministry of Commerce in accordance with the requirements.

**Article 4** All economic and commercial organs sent abroad, Chinese invested enterprises, chambers of commerce and associations abroad should organize Chinese invested enterprises to exchange opinions and [have] discussions on the content of the report, listen to the overall opinions of Chinese invested enterprises and implement annual report rules carefully. They should report to the Ministry of Commerce the problems that Chinese enterprises met with in [their] investment and business abroad in accordance with the requirements. Important issues should be reported at any time (Refer to Appendix 1 about the form of the report).

**Article 5** Chinese invested enterprises abroad and their domestic investors may put forward [a] report on one or several problems at any time or at irregular intervals in the light of the actual problems they meet with in their investment and business abroad (Refer to Appendix 1 about the form of the report).

**Article 6** The Report is Written and Issued With Signature

#### **Chapter III: Major Content of the Report**

**Article 7** The report should reflect the actual situation and the problems that Chinese enterprises meet with in the investment and service trade in host countries (including project contact, labour service cooperation, design and advisory) strictly according to the facts.

1. [The entirety] of Chinese enterprises' investment and business

(1) The [entirety] of Chinese enterprises in quantity, investment scale, industrial distribution and operation situation, and as well as universal problems they are facing;

(2) Brief introduction of major projects invested by Chinese enterprises, including the name of the enterprises, the name of the domestic investors (please give a clear indication, if the investment is made through a third country or region), investment scale, the [means] of investment, major business and products, operation situation and main problems.

2. The obstacles and risks of investment environment

(1) The laws and regulations the host countries promulgated that are detrimental to the investment of China;

(2) Non-business obstacles and risks which bring cost burdens to the enterprises in host countries, such as public security and safety, reputation of the enterprises, government corruption, labour unions, strikes, public[] attitudes [regarding Chinese investors], and the rules of festivals and holidays; and

(3) The shortcomings [in the] host countries [that] affect the enterprises' investment in supply of basic facilities and price, such as traffic, water, electricity, gas and communication;

3. The barriers of the investment and service trade

Following measures that the governments of host countries implement or support to implement and violate multilateral and bilateral agreements, and cause or may cause unreasonable obstacles, restrictions or damages to Chinese enterprises' investment and service trade, are regarded as investment barriers or service trade barriers, and mainly divided into [the] following parts:

(1) Access barriers, such as imposing unreasonable restrictions on the access of Chinese investment, the members of WTO do not open some specified fields for Chinese investment in accordance with their [agreements]. In bidding for project contracts, the government stipulates that Chinese companies are not allowed to enter a bid unless they enter a bid together with local enterprises or promise to subcontract the project to local companies.

(2) Operational barriers, such as imposing unreasonable restrictions on the business activities of Chinese enterprises in production, supply, sales, persons, money and materials[]; difficulties obtaining work visas; working[] procedures of the government [that] are not made clear to the public or [that have] diverse and complicated [formalities].

(3) Withdrawal barriers, such as imposing restrictions on withdrawal of Chinese investment or Chinese invested enterprises' remittance of business interests.

4. Suggestions on [response] measures

The suggestions on [response] measures the report put forward in the light of above problems, obstacles and investment barriers.

#### **Chapter IV: Report and Publication of the Report**

**Article 8** The report should be reported to the Department of Cooperation, related local departments [and the] Bureau of Fair Trade of the Ministry of Commerce in writ[ing and via the] Internet.

The organs that have good conditions should make good use of the information exchange[e] system of administrative affairs of the Ministry of Commerce to submit the report. They may also fill in a form and send it directly in the

column of Report of Business Obstacles on the Investment in Different Countries in Cooperation Guidance subnet (www.mofcom.gov.cn), ... [the] Processing Division of the Department of Cooperation through hzjg@mofcom.gov.cn[,] or to [the] Barrier Investigation Division of Bureau of Fair Trade through boft\_tbi@mofcom.gov.cn.

**Article 9** The Ministry of Commerce will publish [the] related contents of the report, express its attention to the problems in the investment environment of host countries and call the attention of the investment enterprises to avoid the risks through The Environmental Report on Trade Investment in Different Countries regularly on the basis of safeguarding the enterprises' interests and business secrets.

#### **Chapter V: Settlement Mechanism of the Problems in the Report**

**Article 10** After the receipt of the report, the Ministry of Commerce will exchange ideas and consult with related departments in [a timely manner] and put forward their comments and the measures to solve the problems in the light of the problems in the report.

**Article 11** The Ministry of Commerce may help the enterprises to seek a solution to the problems in the report by high-level exchanges, bilateral economic and trade commissions or other diplomatic channels.

**Article 12** If the problems in the report are related to investment barriers or service trade barriers, the Ministry of Commerce may start an investigation into them in accordance with the provisions of Temporary Rules on the Investigation of Foreign Trade Barrier[s].

#### **Chapter VI: Supplementary Articles**

**Article 13** The interpretation of the said Rules shall be vested in the Ministry of Commerce.

**Article 14** The said Rules come into effect as of the promulgation.

Appendixes:

1. The Form of Obstacle Report on the Investment of Chinese Economic and Commercial Organs, Chinese Invested Enterprises, Chambers of Commerce and Associations Abroad in Different Countries (Regions) [omitted]
2. The Form of Obstacle Report on the Investment of Chinese Invested Enterprises, Domestic Investors in Different Countries (Regions) [omitted]

(All information published in this website is authentic in Chinese. English is provided for reference only.)

### **35. Circular of Ministry of Commerce and State Administration of Foreign Exchange About 2005 Joint Annual Examination and Comprehensive Achievements Evaluation on Investment Abroad (MOFCOM & SAFE, April 2005)**

Source: MOFCOM website. Retrieved from <http://english.mofcom.gov.cn/aarticle/policyrelease/domesticpolicy/200505/20050500103206.html>

Shang He Han [2005] No. 9

Competent commercial administrations of all provinces, autonomous regions, cities directly under the Central Government, municipalities specifically designated in the state plan and Xinjiang Production and Construction Group, branch offices and foreign exchange management departments of State Administration of Foreign Exchange in all provinces, autonomous regions, cities directly under the Central Government, branch offices of Shenzhen, Dalian, Qingdao, Xiamen and Ningbo, State Tobacco Monopoly Bureau, central enterprises:

2005 Joint annual examination and comprehensive achievements evaluation of investment abroad will begin, departments responsible for annual examination should make good preparations and [be organized] to do the joint annual examination and comprehensive evaluation carefully on the basis of summarizing [the] 2004 works. Related works in 2005 are hereby informed as follows:

#### 1. Targets of annual examination

All non-financial enterprises abroad directly invested, purchased or shared by domestic investment main bodies before January 1, 2003 (except enterprises abroad established with foreign aid funds and in the countries or regions that have no diplomatic relations with our country) should take part in [the] joint annual examination and comprehensive achievements evaluation on investment abroad.

All non-financial enterprises abroad, non-financial enterprises abroad established with foreign aid funds and the enterprises abroad established in the countries or regions that have no diplomatic relations with our country from January 1, 2003 to December 31, 2004 report only Form I, II and IV of [the] Annual Examination Report, Financial Report Form of the enterprises abroad and foreign exchange registration documents of the investment abroad or other foreign exchange management approval documents of investment abroad (reasons should be given by report if above materials cannot be provided).

The administrations responsible for annual examination should give a great deal of publicity to joint annual examination[s] and inform main domestic investment bodies to take part in joint annual examination[s] on time by publishing the announcement of joint annual examination[s] through local media. Verify carefully the information of the enterprises under their jurisdiction taking part in the examination according to [the] 2004 annual examination and the data managed by themselves.

Pay much attention to check up and find enterprises abroad that have gone through approval formalities of enterprises abroad or foreign exchange registration formalities of investment abroad but have not taken part in [the] 2004 joint annual examination in accordance with regulations.

#### 2. Time of annual examination: July 1–September 15, 2005

#### 3. Materials for annual examination

(1) Investment main bodies may download [the] Annual Examination Report from the website of [the] Ministry of Commerce, [www.mofcom.gov.cn](http://www.mofcom.gov.cn) and the website of [the] State Administration of Foreign Exchange, [www.safe.gov.cn](http://www.safe.gov.cn), type it in A4-sized paper, and fill [it in] accurately according to relevant materials of the enterprises abroad, in triplicate.



(2) To the enterprises abroad that have taken part in [the] 2004 joint annual examination and obtained [the] Certificate of Annual Examination, the investment main bodies should deliver a copy of [the] Annual Examination Report and Certificate of Annual Examination to local competent commercial administrations or the headquarters of central enterprises before August 10.

Apart from those, they should deliver two copies of [the] Annual Examination Report and Certificate of Annual Examination, Financial Report Form and Audit Report of the Enterprises Abroad to local administrations of foreign exchange.

To the enterprises abroad that take part in joint annual examination for the first time, the investment main bodies should deliver one copy of [the] Annual Examination Report to local competent commercial administration and headquarters of central enterprises and send another two copies of [the] Annual Examination Report, Financial Report Form and Audit Report of the enterprises abroad and foreign exchange registration documents of investment abroad relating to the enterprises abroad to [the] local administrations of foreign exchange. If [the] domestic investment main bodies could not provide foreign exchange registration documents of investment abroad, they may submit the examination comments on capital source[s] of foreign exchange, approval papers of buying and selling foreign liquid assets and other approval documents of foreign exchange management document about [the] investment abroad. [The a]bove documents should be submitted as [an] appendix. Reasons should be given by report if the documents could not be submitted.

#### 4. Procedures of annual examination of local administrations of foreign exchange

Local administrations of foreign exchange should carry out annual examination[s] according to [the] following steps within 15 days [from] the receipt of all annual examination materials of the investment main bodies:

(1) Verify Form II and IV of Annual Examination Report. [For] Form II, verify specially whether the foreign exchange management of investment abroad is truthful and accord[s] with the regulations according to business files. [For] Form IV, pay attention to whether the numbers filled in by the investment main bodies are consistent with those in [the] delivered Financial Report Form of the enterprises abroad.

(2) Give a mark to the enterprises taking part in the examination according to the verification of the materials for annual examination[s] and marking standard[s] of annual examination[s]. Fill the marks in the column of "Evaluation of Foreign Exchange Administration" in Report Form V of [the] Annual Examination Report, and [the] Verification Seal (2) of [the] Foreign Exchange Business of Capital Item should be affixed on the column of "Annual Examination Administration."

All branch offices of [the] Foreign Exchange Administration or Foreign Exchange Management Departments may authorize [the] central branch office to examine the annual examination materials preliminarily and give a mark on them in the light of local conditions. All branch offices of foreign exchange or foreign exchange departments verify the result[s] of preliminary examination[s] made by [the] central branch office and affix [the] Verification Seal (2) of Foreign Exchange Business of Capital Item on the column of "Annual Examination Administration."

(3) Return an Annual Examination Report to the investment main bodies and keep other materials on file. The report should be transferred to local commercial administration or headquarters of central enterprises by the investment main bodies.

5. Procedures of annual examination of local competent commercial administration or headquarters of central enterprises. Local competent commercial administration or headquarters of central enterprises should carry out annual examinations according to [the] following steps [upon] receipt of [the] Annual Examination Report of foreign exchange administrations:

(1) Use the software of comprehensive achievements evaluation of investment abroad to evaluate the status of the enterprises abroad. The marks, [multiplied by] 50 per cent, [will be] the marks of the status of the enterprises abroad. Fill the marks in the column of "Status of Investment Abroad" of [the] Annual Examination Report. [The y]ear of comprehensive achievements evaluation is 2005.

(2) Whether an enterprise is established and operates normally (full marks 6), whether it has serious problems while operating (full marks 4) and how the investment main body and its enterprises abroad abide by national regulations of investment abroad (total marks 20) are filled in the column of "Evaluation of Commercial Administrations or Headquarters" of central enterprises in Form V of [the] Annual Examination Report. Full marks in this column are 30. Local competent commercial administrations or headquarters of central enterprises should make careful investigation and objective evaluation. If necessary, they may find out related information from Chinese business setups abroad.

(3) Local competent commercial administrations or headquarters of Central enterprises may determine annual examination grades of the enterprises abroad according to the total marks of every item, write down the marks on [a] Certificate of Annual Examination and affix the special seal of annual examination. [The] Certificate of Annual Examination should be given to the investment main bodies.

Local competent commercial administrations or headquarters of central enterprises should report the data document (pattern ADT) formed from [the] comprehensive achievements evaluation system of investment abroad to [the] Ministry of Commerce by e-mail, and send the result[s] of [the] annual examination of this year (grades of the enterprises abroad) to the Ministry of Commerce. Send them to [lijian@mofcom.gov.cn](mailto:lijian@mofcom.gov.cn).

#### 6. Summary of annual examination

[In the] annual examination[,] [a]dministrations should carefully summarize the investment abroad and work out [the] annual examination report. Local competent commercial administrations or headquarters of central enterprises should submit the report to [the] Ministry of Commerce before October 15, 2005. All branch offices of foreign exchange and foreign exchange management departments should submit the report and General Information Form of Joint Annual Examination on Investment Abroad—it may be downloaded from the website of State Administration of Foreign Exchange at [www.safe.gov.cn](http://www.safe.gov.cn)—to State Administration of Foreign Exchange before October 15, 2005.

#### 7. Cross-verification and sharing of annual examination data

Local competent commercial administrations and local administrations of foreign exchange should provide and verify the gathered data of annual examination to each other before October 30, 2005.

#### 8. File management

Local competent commercial administrations and local administrations of foreign exchange should [place] related materials of joint annual examination[s] in 2003, 2004 and 2005 into the files of the enterprises abroad corresponding to domestic investment main bodies or foreign exchange registration files of investment abroad and manage them together. Written documents should be kept for three years.

#### 9. Dealing with enterprises that do not take part in the examination

After [the] 2005 annual examination, all local competent commercial administrations and local administrations of foreign exchange should pay attention to check up and deal with the activities violating the regulations of investment abroad of the investment main bodies under their jurisdiction (see Appendix I for principles of dealing with them). Related investment main bodies should be listed as special control targets.

10. All local competent commercial administrations and local administrations of foreign exchange must verify how investment main bodies take part in annual examination of the enterprises abroad. Annual examination result[s] should be important check-up target[s] to determine whether the investment main bodies accord with the regulations.

#### 11. Go through domestic approval formalities afterwards

Domestic investment main bodies that have invested abroad but have not gone through all domestic approval formalities in accordance with the requirements may apply [to go] through related approval formalities afterwards in local competent commercial administrations and local administrations of foreign exchange (see Appendix II for procedures of going through the formalities afterwards) after they take part in [the] 2005 joint annual examination and comprehensive achievements evaluation. Their Certificate of Annual Examination of the right year should be enclosed.

12. In order to assure the objectiveness, truthfulness and seriousness of joint annual examination[s] on investment abroad, [the] Ministry of Commerce and State Administration of Foreign Exchange will form a joint working group, choosing some provinces and central enterprises to carry out joint examination on the result[s] of 2003 and 2004 joint annual examination[s]. Details about it will be [provided] later.

13. If some problems are found in [the] 2005 joint annual examination, please contact [the] Ministry of Commerce (Cooperation Department, Tel: 010-65197482, Fax: 010-65197481), or State Administration of Foreign Exchange (Capital Department, Tel: 010-68402252 Fax: 010-68402253)

(All information published in this website is authentic in Chinese. English is provided for reference only.)

### **36. *Registration System for Overseas Chinese-Invested Enterprises (Organizations) (MOFCOM, September 2005)***

Source: Unofficial translation available from the Asian Law Information Institute (AsianLII). Retrieved from <http://www.asianlii.org/cn/legis/cen/laws/rsfocie808/>

Competent departments of commerce in all provinces, autonomous regions, municipalities directly under the Central Government and Xinjiang Production and Construction Corps, all central enterprises, [and] all the business departments (offices) of Chinese embassies (consulates) in the foreign countries,

With a view to strengthening the administration of overseas Chinese invested enterprises, the Ministry of Commerce formulated the Registration System for Overseas Chinese Invested Enterprises (Organizations) in accordance with the Provisions on the Examination and Approval of Investment to Run Enterprises Abroad (Decree No.16, 2004 of the Ministry of Commerce). It is hereby printed and distributed and shall be implemented accordingly.

It is hereby notified.

Ministry of Commerce, September 14, 2005

### **Registration System for Overseas Chinese Invested Enterprises (Organizations)**

#### **Article 1**

For the purpose of improving the management of overseas Chinese invested enterprises (organizations) (hereinafter referred to as "Chinese invested enterprises"), strengthening coordination and guidance [of] Chinese invested enterprises as well as providing various public services and safeguarding the legitimate rights and interests of Chinese invested enterprises and their employees sent abroad, this System has been formulated in accordance with pertinent national regulations and Provisions on the Examination and Approval of Investment to Run Enterprises Abroad (Decree No.16, 2004 of the Ministry of Commerce).

#### **Article 2**

Chinese invested enterprises which have been verified and approved by the Ministry of Commerce or the competent department of commerce at the provincial level shall check in and register in the business departments (offices) of local Chinese embassies (consulates) on the strength of the Approval Certificate of People's Republic of China on Overseas Investment (including overseas processing[]) and overseas organizations).

#### **Article 3**

Within 30 days after going through registration procedures in the investment countries, the person in charge of Chinese invested enterprises shall check in and register in the business departments (offices) of local Chinese embassies (consulates) with "The Registering Table of Overseas Chinese Invested Enterprises." (See attached table below, hereinafter referred to as "The Registering Table").

#### **Article 4**

The Chinese invested enterprises shall, when they are registering, submit the "Registering Table" to the business departments (offices) of local Chinese embassies (consulates), together with the following materials:

1. Copies of approval papers from the Ministry of [the] competent department of commerce at the provincial level;
2. Copies of the "Approval Certificate of People's Republic of China on Overseas Investment" (including overseas processing[]) and overseas organizations); and
3. Copies of [registration] papers.

#### **Article 5**

The business departments (offices) of Chinese embassies (consulates) shall [perform] the registering work [well and] with a serious attitude, establish archives for Chinese invested enterprises and keep them in good order.

#### **Article 6**

The business departments (offices) of Chinese embassies (consulates) shall attach importance to strengthen[ing] ties with Chinese invested enterprises in their daily work, do a good job in coordinative guidance services and shall facilitate the success[ful] operations of Chinese invested enterprises. For emergencies occur[ing] in Chinese invested enterprises or the host country, the business departments (offices) shall endeavour to maintain undisturbed connections with the enterprises and notify the domestic departments in charge and domestic investment bodies of the current situation and shall make thorough arrangements and handling measures to protect the various rights and interests of the Chinese invested enterprises and their employees.

#### Article 7

Domestic investment bodies shall submit the acknowledgement voucher of “The Registering Table” to the competent department of Commerce at the provincial level in [a] time[ly manner]; Chinese invested enterprises set up by the central enterprises shall submit the acknowledgement voucher of the “Registering Table” to their domestic headquarters. Chinese invested enterprises’ registration shall be under the joint annual [supervision] of the overseas investment.

#### Article 8

Enterprises set up by mainland investors in Hong Kong and Macau shall observe this System to check in and register at the Liaison Offices stationed there by the central government.

#### Article 9

The power to interpret this System shall remain with the Ministry of Commerce.

[The Annex to this circular, which is the Registration Table of Overseas Chinese Invested Enterprises, is not reproduced here, but was included with the circular on AsianLII’s website].

### **37. Urgent Circular of the Ministry of Commerce on Strengthening the Statistical Work of China’s Outward Foreign Direct Investment (MOFCOM, November 2006)**

Source: Ministry of Commerce website. Retrieved from <http://english.mofcom.gov.cn/aarticle/policyrelease/announcement/200703/20070304499331.html>

Shang He Han [2006] No. 66

The commerce departments of all provinces, autonomous regions, municipalities directly under the central government, cities specifically designated in the state plan and Xinjiang Production and Construction Corps, and the relevant enterprises directly under the central authorities,

Since the implementation of the Statistical System of Direct Overseas Investment in effect as of January 2003, the statistical work of China’s outward foreign direct investment, under the active cooperation and earnest support of the commerce departments at each level and relevant enterprises and entities, has been [going] smoothly.

The Ministry of Commerce has so far, in conjunction with the National Bureau of Statistics, promulgated the Statistical Bulletin of China’s Outward Foreign Direct Investment (Non-Finance Part) of 2003, 2004 and 2005.

China’s outward foreign direct investment statistics data have been drawing wide attention from the government departments, research institutions, experts and scholars throughout the world. For the purpose of [continuing to successfully perform] the statistical work of China’s outward foreign direct investment in the next phase, the following requirements are hereby set forth.

1. Each entity shall seriously and actively implement the Statistical System of Direct Overseas Investment, attach great importance to the statistical work of the outward foreign direct investment, intensify the publicity of the statistical system, continuously improve the quality of the statistical data and strengthen the timeliness and accuracy of data report[s].
2. The commerce departments at the provincial level shall communicate with the local foreign exchange departments in an initiative and active manner and establish the information exchange and contact mechanism therewith so as to guarantee that the outward foreign direct investment be more comprehensive and complete.

3. The statistical personnel shall intensify their study of professional knowledge and continuously improve their professional quality and operational level. The statistical personnel shall start with studying the Statistical System of Direct Overseas Investment, correctly understand the basic concepts and computation principles therein, and master the application programs therein.

4. The commerce departments at each level and enterprises (groups) directly under the central authorities shall, in serious accordance with the time and format as provided for in the Statistical System of Direct Overseas Investment, assign the statistical work of the outward foreign direct investment of 2006 for the enterprises under their jurisdiction and subsidiary enterprises thereof, [and] organize and arrange the statistical work of the outward foreign direct investment of 2006 [well and] in advance. The comprehensiveness, completeness and accuracy of the statistical indexes shall be emphasized. Such indexes that can reflect on the contribution of enterprises outside the territory of China to the host country as the number of employed people in enterprises outside the territory of China, the total amount of [taxes paid] overseas by enterprises outside the territory of China shall be emphatically examined. Reinvesting through tax havens, if any, shall be seriously reported by enterprises concerned.

5. The Ministry of Commerce will commend and reward those entities and individuals with outstanding performance in the statistical work. Any act of delaying, falsifying, concealing or refusing the report of statistical data of the outward foreign direct investment shall be circulated [in] a report of criticism by the Ministry of Commerce and shall be [punished] by the statistics departments at the county level or above in accordance with the relevant provisions of the Detailed Rules for the Implementation of the Statistics Law of the People's Republic of China. Furthermore, whether reporting statistical documents in accordance with the statistical system [is done] in time, when the Ministry of Commerce formulates financial support policies in conjunction with other relevant departments and commissions, [this] shall be taken as one of the qualifications and conditions of enjoying the state policy support. Those reporting statistical data otherwise not in a timely and comprehensive way will not enjoy state policy support.

Appendix: Form of Information on Reinvesting through Major Tax Havens by Domestic Investing Entities

[The Appendix is not reproduced here].

The Ministry of Commerce, November 21, 2006

### **38. Notice of Application of the 2011 Special Funds of Foreign Economic and Technology Cooperation (MOF & MOFCOM, April 2011)**

Source: Ministry of Commerce website. Retrieved from <http://www.mofcom.gov.cn/aarticle/b/bf/201104/20110407525027.html> (in Mandarin Chinese); in Translation by IISD

Cai Qi [2011] No. 76

To speed up the development of China's foreign economic and technology cooperation and to support Chinese enterprises "going global," Chinese enterprises engaged in foreign economic and technology cooperation, such as overseas investment, foreign contracted projects, and labour service cooperation, will be continually supported according to the Notice on Administrative Measures of Special Funds for Foreign Economic and Technical Cooperation issued by the Ministry of Finance and Ministry of Commerce (Cai Qi [2005] No. 255, hereinafter referred to as "Measures"). The content of *Notice of Application for the 2011 Special Funds of Foreign Economic and Technology Cooperation* is as follows:

## **1. Scope of foreign economic and technology cooperation**

### **(A) Overseas investment**

“Overseas investment” refers to legally established Chinese enterprises’ (hereinafter referred to as “Chinese enterprises”) business activities setting up overseas non-financial companies through new establishment, mergers and acquisitions, etc., or acquiring ownership, control, management rights and other rights and interests of existing non-financial companies.

### **(B) Overseas agriculture, forestry, fishing and mining cooperation**

“Overseas agricultural cooperation” refers to Chinese enterprises conducting overseas plantation of agricultural and economic crops, livestock operations, agro-processing, sales and other business activities through starting a business, buying or leasing land overseas;

“Overseas forestry cooperation” refers to Chinese enterprises carrying out tree planting, harvesting, replanting and wood processing overseas and transporting it back to China by signing a contract (agreement), purchasing forest rights or harvesting licenses, and setting up enterprises;

“Overseas fishery cooperation” refers to Chinese enterprises conducting overseas fishing, aquaculture, processing, and marketing and development-related activities by signing a contract (agreement), purchasing fishing licenses, starting a business or sending a fishing boat.

“Overseas mining cooperation” refers to Chinese enterprises conducting mineral exploration, development and processing operations by setting up overseas mining companies with Chinese investment or direct purchase of mineral rights, capacity investment, special business licenses, or resources reimbursement.

### **(C) Overseas contracted projects**

“Overseas contracted projects” refers to Chinese enterprises or Chinese institutions contracted in overseas construction projects, including consulting, surveying, design, supervision, bidding, costing, procurement, construction, installation, commissioning, and operation and management projects.

### **(D) Overseas labour cooperation**

“Overseas labour cooperation” refers to Chinese enterprises, with qualifications for foreign labour service cooperation businesses approved by the Ministry of Commerce, entering into contracts with foreign companies, agents or private employers which are eligible for hiring foreign labourers. Based on the contracts, the Chinese enterprises will organize the recruiting, selection and sending of Chinese citizens to the host country (territory) to provide labour services to the foreign employers.

## **2. Overseas economic and technology cooperation that is highly supported in 2011**

(A) Overseas R&D centres and equipment manufacturing projects invested and implemented directly by Chinese enterprises; projects implemented in the host country’s trade and economic cooperation zones; overseas agriculture, forestry and fishery cooperation projects.

The equipment manufacturing industry includes general equipment manufacturing, special equipment manufacturing, transportation equipment manufacturing, electrical machinery and equipment manufacturing, communication equipment, computers and other electronic equipment manufacturing, instrumentation and culture, office machinery manufacturing, handicrafts and other manufacturing (China Domestic Economic Section Classification Category, sector code c35-c42).

(B) Overseas contracted projects implemented by Chinese enterprises in the category of franchise, and overseas contracted projects applying Chinese engineering standards and priced in RMB.

Overseas contracted projects in the category of franchise include BOT (build-operate-transfer) and its derivative method BOOT (build-own-operate-transfer), BOO (build-own-operate), BT (build-in-transfer), TOT (transfer-operate-transfer) and PPP (public-private cooperation) projects.

### **3. Content and standards for overseas economic and technology cooperation supported by special funds**

#### **(A) Direct subsidies**

1. Upfront costs. "Upfront costs" refers to the costs related to obtaining the projects before Chinese enterprises set up (register) overseas companies, purchase resource licenses or sign the contract (agreement) in the host countries, in order to engage in overseas investment (not including transfers between domestic enterprises for existing outward investment equity) and overseas agriculture, forestry, fisheries, mining cooperation. These include:

(1) Legal, technical and business consultancy costs

- Expenditures for commission of legal, technical, business and investment and financing consulting services provided by qualified professional bodies for the project;

(2) Survey and investigation costs

- Project inspection fees (not including oil and gas, mineral resources exploration costs), feasibility studies and planning fees; and
- Fishery resources exploratory fees: exploratory fishing equipment purchase costs, agency fees, ship registration fees.

(3) Project feasibility studies, safety assessment reports

- Expenditures for compiling project proposals, pre-feasibility study reports, feasibility studies and project safety assessment reports by qualified professional bodies.

(4) Purchase of specifications and tender documents and other information

- Expenditures for purchase of (resource) survey permits, fishing licenses, tenders, technical data, and software.

(5) Normative documents and tender translation

- Expenditures on translation of specification and tender documents by professional bodies or persons.

Upfront costs are supported when they are less than the investment from the Chinese partner or 15 per cent of the contract value. The proportion of supported special funds should not exceed 50 per cent of the total amount of the eligible upfront costs. A project can only enjoy support for upfront costs once. Existing projects with additional investment will not be eligible for any support.

2. Transportation insurance on resources to be transported back to China

Chinese enterprises engaged in overseas resource development will be granted not more than 20 per cent of actual expenses of transportation insurance on transporting the products back to China that were produced in overseas agriculture (including soybeans, corn, wheat, natural rubber, palm oil, cotton, cassava), forestry (timber, lumber, sheet metal), and fishery cooperation projects. The products that can be transported back to China shall not exceed the approved limit. This applies to the transportation from the host country's departure port to the entry port in China. The amount of products transported back to China and used to calculate the transportation insurance is based on customs statistics.



Transportation insurance for products (please see above-mentioned category, proportion is the same as agriculture, forestry and fishery projects) exchanged by overseas contracted projects will be granted subsidies. The amount of subsidies will not exceed the total contract value of overseas contracted projects.

### 3. Personal accident insurance for “going global” employees

Personal accident insurance costs for employees in overseas economic technology cooperation enterprises will be subsidized. The maximum insured amount per person will not exceed CNY 500,000, and the support ratio will not exceed 50 per cent of the actual insurance expenses.

### 4. Costs of dealing with emergencies

“Overseas emergencies” refers to threats to personal security, such as threat, injury or death of employees in overseas economic technology cooperation enterprises caused by unpreventable events such as terror, war, natural disasters and other force majeure factors. Costs of dealing with overseas emergencies include applications for emergency passports, visas, international travel and temporary pocket money for sending employees to deal with the emergency. The subsidy standards are based on the *Notice on Measures of Expenses Standard for Temporary Overseas Travel* issued by the Ministry of Finance, Ministry of Foreign Affairs (Cai Hang [2001] No. 73).

### 5. Patent registration fees for overseas R&D centres

Patent registration fees for overseas R&D centres of Chinese enterprises in host countries will be subsidized at a level not exceeding 50 per cent of the actual registration expenses.

### 6. Adaptive training costs for Chinese labourers overseas

Chinese enterprises will be subsidized for the expenses of adaptive training for labourers from China. The subsidies will depend on the actual number of the labourers. The subsidies will not exceed CNY 500 per person.

## **(B) Loan discount**

Loan discounts will be provided to loans applied from Chinese banks with a credit period of one year or more for Chinese enterprises engaged in overseas investment, overseas agriculture, forestry, fisheries, mining cooperation, overseas project contracting, design and consultation.

The RMB discounted loan rate shall not exceed the benchmark interest rate announced by the People’s Bank of China. If the real interest rate is below the benchmark rate, the discounted loan rate shall not exceed the real interest rate. The annual discounted rate of foreign currency loans shall not exceed 3 per cent; if the real interest rate is below 3 per cent, the discounted loan rate should not exceed the real interest rate.

Loan discounts will not be provided to those projects which have enjoyed the special funds for a total of three years.

## **(C) Maximum for special funds**

The total amount of special funds granted to one enterprise for foreign economic and technology cooperation shall not exceed CNY30 million. Enterprises subordinated to the same owner are considered as one enterprise when applying for special funds.

#### **4. Requirements on corporate applicants**

**(A) An enterprise applying for the funds must meet the following conditions:**

1. it is legally registered in China, with an independent legal person status;
2. it has been approved by national-level authorities (approval or written documentation for the record) to invest in overseas economic and technology cooperation projects;
3. it has had no record of illegal conduct and/or record of violating discipline in the past five years;
4. it has paid back the principle of the government funds before the application;
5. it has provided statistical information to the administrative authority of overseas economic and technology cooperation in accordance with the *Statistics System for Outward Direct Investment* (Shang He Fa [2008] 529), *Statistics System for Overseas Contracted Projects*, and *Statistics System for Overseas Labour-Export Services and Employment* (Shang He Fa [2008] 511 ), *Notice on Filing System of Chinese Employees in Overseas Investment Cooperation Enterprises in the Host Country*, issued by Ministry of Commerce and Ministry of Foreign Affairs (Shang He Fa [2010] No. 419) and *Notice on Database of Basic Information for Chinese Labourers Who Work Overseas* (Shang He Fa [2007] No. 36).

**(B) A project must meet the following conditions:**

1. Approved, registered and filed by relevant national governmental departments;
2. Legally registered and effective in the host country;
3. The amount of Chinese investment in the project shall be:
  - (1) not less than US\$5 million (or currency equivalent) for the contract value of an overseas contracted engineering project, and not less than CNY 3 million (or currency equivalent) for a single loan amount;
  - (2) not less than US\$ 1 million (or currency equivalent) for overseas investment and Chinese investment in overseas forestry, fisheries, and mining projects, and not less than CNY 3 million (or currency equivalent) for a single loan amount;
  - (3) not less than US\$ 500,000 (or currency equivalent) for overseas agricultural cooperation, Chinese invested R&D centres, and contract values for overseas design and consultation projects, and not less than CNY 1.5 million (or currency equivalent) for a single loan amount;
4. Eligible time frames:
  - (1) For upfront costs of the project application, the registration time of new categories of overseas projects, effective date of the contract for acquisitions and overseas contracted projects, contract signing for design and consultation projects, and the contract signing for agriculture, forestry, fishing and mining cooperation projects, access to resources warrants, fishing permits or lease of land must be from January 1, 2010 to December 31, 2010.
  - (2) For projects applying for loan discounts, the project contracts and loan contracts shall be eligible in the period January 1, 2010 to December 31, 2010, and interest in the above-mentioned period must have been paid before the application deadline;
  - (3) For projects applying for subsidies to transport resources explored in host country back to China and for personal accident insurance for "going global" staff, the project contracts shall be eligible in the period from January 1, 2010 to December 31, 2010, and the resource products must be transported back to China during the above-mentioned period (subject to customs declaration);

(4) For projects applying for subsidies to handle overseas emergencies, the unexpected emergencies shall occur in the period January 1, 2010 to December 31, 2010, and while the project contract (agreement) is running;

(5) For projects applying for subsidies for labour training, the dispatch of labour shall happen in the period of January 1, 2010 to December 31, 2010.

#### **5. Payment procedures of special funds**

(A) Business application materials shall be in strict accordance with the requirements in the guidance on applying for special funds (annex 1, 2) for economic and technology cooperation.

(B) Eligible applications (summary and required spreadsheets) shall be submitted to the Ministry of Finance (Department of Enterprise) and Ministry of Commerce (Investment Promotion Agency) by local provincial finance and commerce departments before May 31, 2011, after careful review based on the *Administrative Measures on Special Funds for Overseas Economic Technology Cooperation* and this "Notice."

(C) Applications (required spreadsheets) from enterprises owned by the central government shall be summarized by their group corporation (head office) and submitted to the Ministry of Finance (Department of Enterprise) and Ministry of Commerce (Investment Promotion Agency) before May 31, 2011.

(D) Funding application documents and a summary of the project's preliminary review (Annex 13) shall be submitted to the Ministry of Finance and the Ministry of Commerce (Investment Promotion Agency) respectively in duplicate. Detailed lists for review of personal accident injury insurance for "going global" personnel, costs for handling overseas emergencies, and adaptive training for overseas labourers (Annexes 14-16) shall be submitted to the Ministry of Commerce (Investment Promotion Agency) by the provincial authorities or the central government enterprise group (head office) after review, and the e-version of these documents shall be sent to zx@fdi.gov.cn. One copy of the remaining document must be submitted to the Ministry of Commerce (Investment Promotion Agency). Applications will not be accepted after the deadline.

(E) Projects that have received other special funds of a similar nature from the central government in 2010 shall not apply for these special funds.

(F) Intermediary agencies authorized by Ministry of Finance and Ministry of Commerce will determine which projects are eligible and how much will be supported, and will appropriate/pay the special funds to central government managed enterprises and local finance departments based on the treasury management system after review of the applications.

6. Local finance and commerce departments, and the central government enterprise group (head office) must perform their duties to carefully review the applications to ensure that documents are complete, true and accurate. Applications shall be safely kept for verification.

Ministry of Finance and Ministry of Commerce of the People's Republic of China April 18, 2011

### 39. *Guides on Chinese-funded Enterprises Overseas* (MOFCOM, 2009 and annually thereafter)

Source: Ministry of Commerce website. Retrieved from <http://fec.mofcom.gov.cn/gbzn/gobiezhinan.shtml> (in Mandarin Chinese)  
Translation by IISD

*Note by the editors: This is an annual publication and is not reproduced here. The Ministry of Commerce began issuing these documents in 2009. Each year, these guides provide Chinese businesses with information on investment environments in roughly 165 host countries. The reports contain information on host countries' relevant laws and regulations, and also feedback from Chinese companies operating in the host countries and their experiences and opinions on such topics as land, labour, employment policies and regulations, and risk management.*

*The introduction to the 2011 version of the Guide on Chinese-funded Enterprises Overseas is provided below.*

In recent years, the rapid development of China's outward investment and co-operation has become an important part of China's economy. According to MOFCOM statistics, in 2010, China's outward direct investment was US\$68.8 billion, overseas contracted projects achieved a turnover of US\$92.2 billion. At the end of 2010, overseas labourers totalled 850,000. In order to encourage and support enterprises as they "go global" there is a definite need to expand the breadth and depth of the opening policy and a necessary choice for economic restructuring. "Going global" will benefit from facing challenges with other countries and achieving common developments.

To help businesses understand and be familiar with the host country's national conditions, since 2009, the International Trade and Economic Cooperation Research Institute and Investment Promotion Bureau of the Ministry of Commerce and the China overseas business organizations have prepared and annually updated the "Outward investment and Cooperation Countries (regions) Guide," which objectively introduces the investment environment for co-operation in host countries (regions), and provides notice to enterprises on potential problems in transnational business. The Guide (2011 edition) was refined and updated based on the Guide (2010 Edition). Compared to the previous version, the Guide (2011) provided information on policies and regulations of land, labour and employment, and risk prevention in the host countries (regions) based on feedback from enterprises, in addition to updated data and policies and regulations.

This Guide covers 165 countries (regions), which is an exploration of providing services to enterprises and welcomes comment and correction. At the same time, I hope the [compiling institutions will analyze comments and suggestions seriously, and constantly improve their work, so that the Guide can play an active role to help enterprises to actively and steadily carry out cross-border business, and build harmonious outward investment and co-operative relations.

Minister of Commerce Chen Deming on

September 19, 2011

#### 40. *Provisional Rules for the Pilot Program of RMB Settlement for Overseas Direct Investment* (People's Bank of China, January 2011)

Retrieved from <http://www.lawviewer.com/index.php/English/View/infoid/6513>

Announcement of the People's Bank of China

(No.1 [2011])

To assist in the pilot RMB settlement in cross-border trade and provide convenience for banking financial institutions and domestic institutions to conduct RMB settlement of outward direct investment (ODI), the People's Bank of China has formulated the Administrative Measures for the Pilot RMB Settlement of Outward Direct Investment, which are hereby issued for immediate implementation.

People's Bank of China

January 6, 2011

Administrative Measures for the Pilot RMB Settlement of Outward Direct Investment

**Article 1** To assist the pilot RMB settlement in cross-border trade, facilitate domestic institutions' outward direct investment (ODI) in RMB, and regulate the RMB settlement business of banking financial institutions (hereinafter referred to as "banks") for outward direct investment, these Measures are formulated in accordance with the *Law of the People's Republic of China on the People's Bank of China* and other relevant laws and administrative regulations.

**Article 2** For the purposes of these Measures, "outward direct investment" means that a domestic institution forms an enterprise or project abroad or acquires abroad all or part of the ownership or control of, or business management right to, an existing enterprise or project in the manner of formation, merger, acquisition or purchase of shares, with the approval of the competent department of outward direct investment.

A "domestic institution" refers to a non-financial enterprise registered in an area participating in the pilot RMB settlement in cross-border trade. "Front-end expenses" refer to the expenses to be paid abroad by a domestic institution in relation to its overseas direct investment before forming a project or enterprise abroad.

**Article 3** The People's Bank of China (PBOC) and the State Administration of Foreign Exchange (SAFE) shall administer the pilot RMB settlement of outward direct investment pursuant to these Measures.

**Article 4** A domestic institution shall obtain approval from the competent department of outward direct investment for its RMB outward direct investment. When going through the approval formalities for the outward direct investment, the domestic institution shall specify the proposed amount of investment in RMB.

**Article 5** For the outward remittance of front-end expenses of an outward direct investment or for an outward direct investment without any front-end expenses already remitted outward, a domestic institution shall submit the following materials to the local foreign exchange authority to go through the registration formalities for the outward remittance of front-end expenses or the outward direct investment:

1. A written application form;
2. The approval document issued by the competent department of outward direct investment and a photocopy thereof, or the photocopies of application documents submitted to the competent department of outward direct investment; and
3. Photocopies of the business license and organization code certificate of the domestic institution.

The local foreign exchange authority shall finish the relevant information registration formalities within 3 days after receiving the relevant application materials.

For an outward direct investment with any front-end expenses already remitted outward, a domestic institution shall submit the relevant information to the local foreign exchange authority within 30 days after obtaining an approval from the competent department of outward direct investment.

**Article 6** A domestic institution may, after going through the registration formalities for the outward remittance of front-end expenses or an outward direct investment under Paragraph 1 of Article 5 of these Measures, handle the outward remittance of RMB capital for the outward direct investment or the outward remittance of front-end expenses at a bank.

The bank shall, when handling the RMB settlement business for outward direct investment, require the domestic institution to submit the approval certificate or document issued by the competent department of outward direct investment and other related materials and carefully examine the same pursuant to the relevant prudential supervision provisions. During the examination, the bank may log on to the Cross-border RMB Receipts and Payments Information Management System and the Direct Investment Foreign Exchange Management Information System to search for the relevant information.

**Article 7** After examining the application documents submitted by a domestic institution to the competent department of outward direct investment as well as the organization code certificate and other relevant materials of the domestic institution, a bank may handle the outward remittance of front-end expenses of the RMB outward direct investment of the domestic institution. In principle, the cumulative total of front-end expenses remitted outward by the domestic institution may not exceed 15 per cent of the total investment of the Chinese party as declared by it to the competent department of outward direct investment. If its front-end expenses really need to exceed the 15 per cent ratio for any overseas merger or other business, it shall make an explanation to the local foreign exchange authority and submit the relevant evidentiary materials.

**Article 8** Banks shall, pursuant to the Measures for the Administration of RMB Bank Settlement Accounts (Order No.5 [2003] of the PBOC) and other relevant provisions, handle the RMB settlement of outward direct investment of domestic institutions through their RMB bank settlement accounts, and submit the relevant cross-border RMB receipts and payments information to the Cross-border RMB Receipts and Payments Information Management System.

**Article 9** Where a business related to a RMB outward direct investment also needs to use foreign exchange capital, a domestic institution and a bank shall handle the formalities for the inward or outward remittance of foreign exchange capital for outward direct investment. At the same time, the bank shall log on to the Direct Investment Foreign Exchange Management Information System to check and ensure the regulatory compliance of the related business.

**Article 10** The sum of the RMB capital and foreign exchange capital remitted outward by a domestic institution for an outward direct investment at a bank shall not exceed the total amount of outward direct investment approved by the competent department of outward direct investment.

The front-end expenses already remitted outward by a domestic institution shall be counted in its total amount of outward direct investment. A bank shall, when handling the outward remittance of RMB capital for the outward direct investment, deduct the amount of front-end expenses already remitted outward. A bank shall submit the cross-border RMB payment information about front-end expenses to the Cross-border RMB Receipts and Payments Information Management System.

**Article 11** A domestic institution which fails to obtain an approval from the competent department of outward direct investment within six months after remitting outward the RMB front-end expenses shall transfer the remaining capital back to the domestic RMB account from which the capital was originally remitted. The relevant bank shall urge the domestic institution to make such a transfer. If the domestic institution refuses to do so, the bank shall file a report on it with the local PBOC office.

**Article 12** A domestic institution may remit its return on outward direct investment back to China in RMB. A bank may, after verifying the profit disposal resolution made by the board of directors of the overseas investee and other materials submitted by a domestic institution, enter the RMB return on outward direct investment into the account of the domestic institution, and submit the RMB profit inward remittance information to the Cross-border RMB Receipts and Payments Information Management System.

**Article 13** For a RMB receipt or payment due to capital increase, capital decrease, equity transfer or liquidation of the overseas investee, a domestic institution may directly handle the inward or outward remittance of RMB capital at a bank with the approval document of the competent department of outward direct investment. When handling such a business, the bank shall submit the relevant cross-border RMB receipt or payment information to the Cross-border RMB Receipts and Payments Information Management System.

**Article 14** In the case of any change of the name, operating period, equity or cooperative joint venture partner, mode of equity or cooperative joint venture and other basic information or in the case of any capital increase, capital decrease, equity transfer or swap or liquidation due to merger or split of a registered overseas investee, a domestic institution shall report such a change to the local foreign exchange authority within 30 days from the day when it occurs.

**Article 15** A bank may, according to the relevant provisions, grant a RMB loan to an overseas enterprise or project in which a domestic institution invests. Where a RMB loan is granted by the bank through an overseas branch of it or an overseas agent bank, the bank may allocate RMB capital to its overseas branch or accommodate the overseas agent bank with RMB capital, but shall file a report on it with the local PBOC office within 15 days. When handling such a business, the bank shall submit the relevant cross-border RMB receipt or payment information to the Cross-border RMB Receipts and Payments Information Management System.

**Article 16** When handling the RMB settlement of outward direct investment, a bank and a domestic institution shall go through the balance-of-payments reporting formalities in accordance with the Measures for Reporting Balance-of-Payments Statistics and other relevant provisions.

**Article 17** Banks shall earnestly perform their information submission obligation to submit timely, accurate and complete cross-border RMB receipts and payments information about outward direct investment to the Cross-border RMB Receipts and Payments Information Management System.

**Article 18** When handling the RMB settlement of outward direct investment, banks shall effectively perform their obligations against money laundering and terrorist financing in accordance with the *Anti-Money Laundering Law of the People's Republic of China* and the relevant provisions of the PBOC to prevent illegal and criminal activities such as money laundering or terrorist financing through RMB outward direct investment. Banks shall gather anti-money laundering and anti-terrorist financing information at the destinations of outward direct investment of domestic institutions, assess the risks of money laundering and terrorist financing there, and take proper risk management measures.

**Article 19** The PBOC shall establish an information sharing mechanism with the SAFE and the competent department of outward direct investment, and intensify the follow-up supervision and inspection to effectively regulate the RMB outward direct investment business.

The Cross-border RMB Receipts and Payments Information Management System transmits the cross-border RMB receipts and payments information about outward direct investment to the Direct Investment Foreign Exchange Management Information System on a daily basis, while the Direct Investment Foreign Exchange Management Information System transmits the cross-border foreign exchange receipts and payments information about outward direct investment to the Cross-border RMB Receipts and Payments Information Management System on a daily basis.

**Article 20** The PBOC shall, in conjunction with the SAFE, make on-site inspections and off-site inspections on the RMB outward direct investment business of banks and domestic institutions, urge banks to effectively perform their duties, such as examination of authenticity of transactions, information submission and fight against money laundering, and oversee domestic institutions in legally conducting business.

**Article 21** Where any bank or domestic institution violates the relevant provisions of these Measures, the PBOC may, in conjunction with the SAFE, circulate a notice of criticism or impose a punishment on the violator. If the circumstances are serious, the bank or domestic institution may be prohibited from continuing to conduct the cross-border RMB business.

**Article 22** A bank which violates the prudential supervision provisions in handling the RMB settlement of outward direct investment shall be legally punished by the competent department; a bank which violates the anti-money laundering or anti-terrorist financing provisions or provisions on the management of RMB bank settlement accounts shall be legally punished by the PBOC.

**Article 23** The RMB settlement of outward direct investment of domestic financial institutions shall be analogically governed by these Measures. If the relevant regulatory authorities have made different provisions on the RMB outward direct investment of domestic financial institutions, such provisions shall apply.

**Article 24** The power to interpret these Measures shall remain with the PBOC.

**Article 25** These Measures shall come into force on the date of issuance. In case of any discrepancy between these Measures and the relevant provisions previously issued, these Measures shall prevail.



## Section Four: Policies and Measures Relating to Overseas Investment in Oil and Mining<sup>6</sup>

### 41. *Notice of the National Development and Reform Commission, the Export-Import Bank of China on Giving Credit Support to the Key Overseas Investment Projects Encouraged by the State/Circular on Supportive Credit Policy on Key Overseas Investment Project Encouraged by the State (NDRC & China ExIm Bank, October 2004)*

Note by the editors: For text, see Document 17 above.

### 42. *China's Policy on Mineral Resources (State Council, December 2003)*

Retrieved from <http://china.org.cn/e-white/20031223/index.htm>

[Much of this document relates to domestic minerals and mining. Yet because issues of domestic supply and demand are relevant to policies for international supply and demand, the policy is reproduced here in full. Key aspects of the policy addressing outward investment are italicized].

#### **Foreword**

Mineral resources are an important part of natural resources, and an important material foundation for the development of human society. Great achievements have been obtained in the survey and development of China's mineral resources in the past five decades since the founding of New China. A great number of mineral resources have been verified, and a fairly complete system for the supply of mineral products has been established, providing an important guarantee for the sustained, rapid and healthy development of the Chinese economy. At present, over 92 per cent of the country's primary energy, 80 per cent of the industrial raw and processed materials and more than 70 per cent of the agricultural means of production come from mineral resources.

China attaches great importance to sustainable development and the rational utilization of mineral resources, and has made sustainable development a national strategy and the protection of resources an important part of this strategy. Immediately following the UN Environmental and Development Conference in 1992, the Chinese government took the lead in formulating the "China Agenda 21 — the White Paper on China's Population, Environment and Development in the 21st Century." It approved and implemented the "National Program on Mineral Resources" in April 2001, and, in January 2003, began to implement "China's Program of Action for Sustainable Development in the Early 21st Century."

To build a well-off society in an all-round way is China's objective in the first 20 years of the new century. China will depend mainly on the exploitation of its own mineral resources to guarantee the needs of its modernization program. The Chinese government encourages the exploration and exploitation of the mineral resources in market demand, especially the dominant resources in the western regions, to increase its domestic capability of mineral resources supply. *At the same time, it is an important government policy to import foreign capital and technology to exploit the country's mineral resources, make use of foreign markets and foreign mineral resources, and help Chinese mining enterprises and mineral products enter the international market. The Chinese government holds that to have foreign mining companies enter China and Chinese mining enterprises enter other countries to make different countries mutually complementary in resources is of great significance for the common prosperity and healthy development of world mineral resources prospecting and exploitation.*

<sup>6</sup> See explanatory text at footnote 2.

### I. The Present Situation of Mineral Resources and Their Exploration and Exploitation

China has discovered 171 varieties of minerals, and 158 of them with proved reserves. There are 10 energy-related minerals, including oil, natural gas, coal, uranium and geotherm; 54 metallic minerals, including iron, manganese, copper, aluminum, lead and zinc; 91 non-metallic minerals, including graphite, phosphorus, sulfur and sylvite; and 3 liquid minerals, including groundwater, and mineral water. There are nearly 18,000 mineral deposits in China, including more than 7,000 big and medium-sized ones.

The basic characteristics of China's mineral resources are:

- **The total quantity of the resources is fairly big and there is a fairly complete variety of minerals.** China has found a rather complete variety of mineral resources, and a fair abundance of mineral resources in total quantity. Large reserves have been verified of major minerals, such as coal, iron, copper, aluminum, lead and zinc. The country enjoys obvious advantages in the world in the resources of coal, rare earths, tungsten, tin, molybdenum, antimony, titanium, gypsum, bentonite, mirabilite, magnesite, barite, fluorspar, talc and graphite. There are abundant geothermal and mineral water resources, and the quality of the groundwater is good on the whole.
- **The per-capita quantity of the resources is small, and there is an imbalance between supply and demand for some of the resources.** The huge population and the low per-capita quantity of mineral resources are a basic national condition in China. The per-capita quantity of mineral resources held by the Chinese people is at a comparatively low level by global standards. There are acute shortages of diamonds, platinum, chromite and sylvite.
- **Superior mineral ores exist side by side with inferior ones.** There are both high-quality ores and those of low grade and complex constituents. The quality is fairly high for tungsten, tin, rare earths, molybdenum, antimony, talc, magnesite and graphite, while in the case of iron, manganese, aluminum, copper and phosphorus there is an excess of low-grade ores, paragenous and associated ores and those refractory for dressing and smelting.
- **Resources with a low degree of geological control account for a greater proportion of the verified reserves of the mineral resources.** In the structure of the verified reserves of the resources, there are more resources, but less reserves or basic reserves; more resource reserves with poor economic workability or with uncertain economic significance, but less resource reserves with ideal economic workability; more controlled and deduced resource reserves, and less verified resource reserves.
- **The conditions for mineralization are good, and there are good prospects for finding more mineral resources.** There is [great] potential for finding more oil, natural gas, gold and copper. The deeper formations and outlying areas of the old mining areas and the western regions are the major substitute areas of mineral resources.

China was one of the first countries in the world to develop its own mineral resources. After the founding of New China, the Chinese government made great efforts to strengthen geological work, and explicitly demanded that this work should go ahead of the economic construction. It formulated the strategic principle for "the development of the mining industry" and made specific arrangements for the exploration and development of mineral resources in all [of] its five-year plans. Great progress has been made in the exploration and exploitation of mineral resources, so that China has gradually become a major country in mineral resources and the mining industry. Mineral resources prospecting and exploitation have supplied large quantities of energy and raw and processed materials for economic construction; provided important sources of revenue; accelerated the development of regional economies, especially economic development in regions inhabited by the ethnic minorities as well as remote and border areas; promoted the rise and growth of mining cities (townships) with mineral resources exploitation as their pillar industry; and solved the problem of employment for large numbers of local people, thus making a major contribution to socioeconomic development in the country.

- **A large number of mineral resources have been discovered and ascertained.** The discovery and construction of a large batch of oil and gas fields, represented by the Daqing Oilfield, has turned China from an oil-poor country into one of [the] major oil-producing countries in the world. China has discovered or expanded a number of major mineral deposits, including the rare-earth metal mine in Bayun Obo, the Dexing Copper Mine, the Jinchuan Nickel Mine, the Shizhuyuan Tungsten Mine, the Luanchuan Molybdenum Mine, the Ashile Copper Mine, the Jiaojia Gold Mine, the Yulong Copper Mine, the Dachang Tin Mine, the lead-zinc mines at Changba and Lanping, the Dongsheng-Shenmu Coalfield, the Zijinshan Copper-Gold Mine and the Yangbajain Geothermal Field. It has also discovered and ascertained a number of major sources of groundwater supply. Parts of the western regions have gradually revealed good prospects for finding mineral resources. New resources have been found in the outlying areas or deeper strata of some of the existing mines. A succession of achievements has been made in the new round of large-scale land and resources survey[s]. The surveys of mineral resources over the past 50 years and more have turned China from a country with uncertainty [regarding its] mineral resources to a country rich in mineral resources, from a country with little-known groundwater resources to a country with groundwater playing a key role in the national water supply. At the same time, China has fostered a large contingent of geological surveyors with a fine tradition and working style, and strong technical forces, who have made important contributions to economic construction in China.
- **The scale of mineral resources exploitation has expanded rapidly.** In 1949, China had just over 300 properly developed mines, producing annually about 120,000 tons of crude oil, 32 million tons of coal, 160,000 tons of steel, 13,000 tons of non-ferrous metals, 10,000 tons of pyrite and less than 100,000 tons of phosphorus. Over the past 50 years or more, China has evolved a large supply system for energy, mineral products and other raw and processed materials, with the successful construction of large petroleum-producing bases such as Daqing, Shengli and Liaohe; large coal-mining centers such as Datong, Yanzhou, Pingdingshan, Huainan, Huaibei and Junggar; large iron and steel production bases such as Shanghai, Anshan, Wuhan and Panzhihua; large non-ferrous metal refining bases such as Baiyin, Jinchuan, Tongling, Dexing and Gejiu; and large chemical mining centres such as Kaiyang, Kunyang and Yunfu. The mushrooming of mining cities has accelerated urbanization in the country. At present, China's output and consumption of mineral products rank among the biggest in the world. In 2002, China had 489 large mines, 1,025 medium-sized ones, and well over 140,000 small ones and sand and clay quarries, employing a total of 9.07 million people, with the output value of the mining industry coming to 454.2 billion yuan. It produced 167 million tons of crude oil and 32.7 billion cu[bic metres] of natural gas. The amount of mineral ores, and sand and clay excavated totaled 4.849 billion tons, including 1.38 billion tons of raw coal, 231 million tons of iron ore, and 23.01 million tons of phosphorus ore; while the output of 10 non-ferrous metals totaled 10.12 million tons. The output of raw coal, steel, 10 non-ferrous metals and cement ranks first in the world; the output of phosphorus ore and pyrite ranks second and third, respectively, and that of crude oil takes the fifth place. The state-owned mining enterprises form the pillar of mineral resources exploitation in China, and also the stable supply base for its energy and raw and processed materials industries. The crude oil, natural gas and 36 per cent of the output of other mineral ores come from 7,679 state-owned mining enterprises. The state-owned mining enterprises have not only laid the foundation for industrial and agricultural development, but also made important contributions to the improvement of the people's living standards and the growth of the comprehensive national strength. Since the mid-1980s, other types of mining enterprises have also witnessed rapid development. There are now 140,000 non-state-owned mining enterprises, including 132 established with investment from Hong Kong, Macao and Taiwan businesses, and 160 with foreign investment.
- **The level of mineral resources protection and rational utilization has been gradually raised.** In the past 50-odd years, China has made great progress in its use of geophysical exploration, geochemical exploration, remote-sensing, drilling and tunneling technologies, laboratory test and computer technology

for mineral resources prospecting. It has raised the scientific and technological level of its mineral resources exploration. Notable results have been obtained in the multipurpose use and recovery of mineral resources, and the rate of resources utilization has been gradually increased. At present, the recovery rate of scrap steel in China is 40 per cent, and the comprehensive recovery rate of scrap non-ferrous metals is 27.70 per cent. Supplies of practically all platinum-group and scattered elements have come from the multipurpose use of mineral resources. Nearly one third of the raw materials for sulfuric acid are also recovered in the production of non-ferrous metals. Some of the coal mining enterprises produce the coal-associated gas, oil shale, kaolin and high-alumina clay for multipurpose development, and process and utilize coal gangue and fly ash, reaping good economic results and environmental benefits.

- **Foreign trade in mineral products has grown fast.** China's total volume of imports and exports of mineral products, energy and raw and processed materials came to US\$111.1 billion in 2002, accounting for 18 per cent of China's total volume of imports and exports. Mineral products that were imported in large quantities included crude oil, iron ore, manganese ore, fine copper ore and potash fertilizer. Meanwhile, China exported large quantities of lead, zinc, tungsten, tin, antimony, rare earths, magnesite, fluorspar, barite, talc, and graphite, and other leading mineral products. *China's co-operation with other countries in the field of mineral resources is expanding constantly. Through prospecting for offshore oil and gas resources in cooperation with foreign companies, a number of new oil and gas fields have been discovered, and the offshore oil and gas output has grown year by year. Prospecting for and exploitation of oil and gas resources in other countries have reached a certain scale. Prospecting for and exploitation of hard rock mineral resources in other countries have also begun. Relations of cooperation in long-term research and development in the field of coal bed methane have been established with some countries.*

However, there are still some contradictions and problems in mineral resources survey and development in China.

They are mainly:

- **The contradiction between the fast economic growth and the huge consumption of some mineral resources.** There is a fairly large gap between the supply and demand in oil, high-grade iron, high-grade copper, fine-quality bauxite, chromite and sylvite. The degree of difficulty in looking for mineral resources by geological means in the eastern regions has increased, and the increase range of proved reserves there has slowed down. The production in some mines has entered the middle or late phase, and their reserves and output are decreasing year by year.
- **Serious waste and environmental pollution still exist in the exploitation and utilization of mineral resources.** The overall arrangements of the mining areas are not satisfactory, and the prospecting and mining technologies are backward, and there is still serious waste in the consumption of resources. The protection of the environment of the mines calls for further improvement.
- **Mineral resources exploration and exploitation are imbalanced between regions.** The western regions and the outlying parts of the central regions abound in resources, but their natural conditions are poor, their ecological systems are weak, and the work of geological surveying and assessment remains at a low level, thus restricting the development of the resources.
- **The degree of market-oriented exploration and development of mineral resources is not high.** The market-oriented systems regarding the rights of prospecting for and extracting of minerals should be further improved. Management of mineral resources should be further improved and standardized. The scope of international exchange and cooperation in the field of mineral resources should be further broadened.

## II. Targets and Principles for Mineral Resources Protection and Rational Utilization

In the first 20 years of the 21st century, China will build a well-off society in an all-round way, so the total demand for mineral resources will continue to increase. China will strengthen its survey[ing], prospecting, exploitation, planning, management, protection and rational utilization of mineral resources, implement the strategy of sustainable development, take a new road to industrialization, and strive to increase the ability of the mineral resources to guarantee its socio-economic development. China will continue to increase the economic returns, social benefits and environmental benefits of the mineral resources to the full[est extent] by implementing an effective policy concerning mineral resources in accordance with the requirements of surveying and exploiting mineral resources in an orderly way and with compensation, striking a balance between supply and demand, optimizing composition, and seeking intensive development and high efficiency.

China's general targets for the protection and rational utilization of its mineral resources in the early 21st century are:

- **To increase the ability of the mineral resources to guarantee the building of a well-off society in an all-round way.** We shall raise the effective input into mineral resources prospecting and exploitation, increase the range and depth of prospecting and exploitation, strengthen the protection of mineral resources, and increase their supply. We shall open still wider to the outside world and take an active part in international cooperation. We shall also establish a reserve system for strategic resources, lay up necessary reserves of mineral resources vital to the national economy and the people's livelihood, and ensure the safety of the country's economy as well as the sustained and safe supply of mineral commodities.
- **To promote the improvement of the ecological environment of the mines.** We shall reduce and control pollution and damage to the environment of the mineral resources caused in the production links of mining, dressing and smelting or refining and bring about a benign cycle in the exploitation of mineral resources and protection of the ecological environment; improve the laws and regulations for environmental protection in mining areas, and exercise still stricter examination and supervision over the law enforcement concerning the control of the ecological environment of the mines; and increase publicity and education to raise the awareness of the mining enterprises and the whole society regarding the importance of resources environmental protection.
- **To create a development environment for fair competition.** In light of the requirements for establishing a socialist market economic system and the operation law governing mineral resources exploration and exploitation, we shall further improve the laws and regulations concerning the management of mineral resources; adjust and perfect the policy on mineral resources; improve the investment environment; provide excellent information service; and create an open, orderly, sound and unified market environment in which all market subjects can compete on an equal footing.

To attain the above targets, China will continue to adhere to the following principles:

- **Persisting in the strategy of sustainable development.** We shall implement the measures for protecting resources and correctly handle the relations between economic development and resources protection; exploit resources in the course of protection and protect them in the course of exploitation; strengthen mineral resources prospecting; exploit mineral resources in a rational way and economize on their utilization; strive to increase efficiency in the utilization of resources; and open a new road to industrialization featuring high tech content, good economic returns, low resource consumption, less environmental pollution, and giv[ing] full play to the advantages of human resources.
- **Adhering to the orientation of reform toward establishing a market economic system.** Under the guidance of the state industrial policy and plan, we shall give full play to the basic role of the market in the allocation of mineral resources, and establish a mechanism for optimum resource[] allocation combining

government macro control with market operation. We shall strengthen control over the total quantity of mineral resources exploitation, foster and standardize the prospecting and mining rights market, promote the diversification of mineral resources exploration, exploitation and investment and the standardization of business operation, and earnestly safeguard the legitimate rights and interests of the state owners and the holders of exploration and mining rights.

- **Persisting in balanced development between regional mineral resources prospecting and exploitation and environmental protection.** We shall work out unified plans and correctly handle the relations between eastern and western regions, between well-developed and less-developed regions, between prospecting and exploitation, between state-owned mining enterprises and non-state-owned mining enterprises, and between scale exploitation and excavation by small mines. We shall further implement the strategy of large-scale development of the western regions, accelerate exploration and exploitation of mineral resources in the western regions, especially the dominant minerals and minerals in short supply at home, support mining towns and old mines in their search for substitute resources, and promote the balanced development of regional economies and the healthy development of mineral resources prospecting and exploitation. We shall persist in combining mineral resources exploitation with attention to the interests of the regions inhabited by ethnic minorities, and strengthen the protection, restoration and control of the mining environment on the principle of putting prevention first and combining prevention with control.
- **Persisting in widened opening-up and cooperation with other countries.** *We shall improve the investment environment, encourage and attract foreign investors to prospect for and exploit mineral resources in China. We shall promote international cooperation in mineral resources, and make such cooperation mutually complementary and beneficial in accordance with the rules of the WTO and international convention[s].*
- **Persisting in making [high] tech progress and innovations.** We shall implement the strategy of rejuvenating the nation by reliance on science and technology; strengthen efforts in tackling key technological problems and popularizing and applying technological achievements in the investigation and assessment of mineral resources and their prospecting and exploitation and multipurpose use and in the prevention and control of environmental pollution in mining areas; strengthen the R & D of high and new technologies involved in the development of new energy sources, new material technologies and marine mineral resources; and improve basic research on new theories, new methods and new technologies. We shall improve the quality of the workers; train a contingent of [high] tech personnel with mastery of advanced scientific theories and the ability to make innovations in mineral resources prospecting and exploitation; and promote the transformation of prospecting and exploitation from a traditional industry to a modern industry, from a labour-intensive industry to a technology-intensive industry, and from extensive management to intensive management.
- **Persisting in managing mineral resources strictly according to law.** We shall improve the legal system, endeavour to promote administration according to law, and exercise stricter supervision and control over mineral resources prospecting and exploitation. We shall rectify and standardize the rules for mineral resources management, and strive to advance mineral resources protection and rational utilization along legal, standardized and scientific lines.

### III. Increasing the Domestic Capability of Mineral Resources Supply

China relies mainly on the development of its own mineral resources and other natural resources to develop its economy. In the course of building a well-off society in an all-round way, China will first of all increase its domestic capability of mineral resources supply. China still has big potential for mineral resources prospecting and exploitation. It has discovered more than 200,000 mineral deposits and mineralized formations throughout the country. So far, only some 20,000 of them have been explored and assessed. Since the 1980s, 72,000 mineralization abnormalities have been discovered, 25,000 of which have been checked, resulting in the discovery of 217 mineral deposits. The unchecked ones hold good prospects for mineral findings. The geological work is still at a low level in the vast western regions and the outlying zones in the eastern regions and the maritime areas under Chinese jurisdiction, and there are many unknown areas. All these show the directions for the work of prospecting for and exploiting domestic mineral resources in China in the future.

The Chinese government, in accordance with the requirement for the establishment of the socialist market economic system, has deepened the reform of the system for mineral resources exploration, and carried out [...] public and basic geological surveys and evaluation and [...] strategic exploration of mineral resources on the one hand and the commercial exploration of mineral resources on the other separately. In 1999, China set up the China Geological Survey, which organized a new round of large-scale survey[s] of the land and resources, and initiated a basic exploration plan, a mineral resources prospecting and evaluation project[,] and a resources survey and utilization technological development project, with [...] [an] emphasis on the basic geological survey and the evaluation of the prospects for mineral resources in regions with a low level of geological work, especially the exploration and evaluation of the mineral resources potential[...] in the western regions and the exploration and evaluation of mineral resources in short supply, so as to provide a scientific basis for the planning work regarding mineral resources and administrative decisions by the government, and to furnish basic geological information regarding mineral resources for commercial prospecting. The strategic prospecting for mineral resources with government investment has attracted investment into commercial prospecting, and a number of areas with prospects of mineralization have become hot spots for commercial investment.

The Chinese government encourages and gives active guidance to the commercial prospecting that meets planning requirements, [...] is geared to market demands and focuses on economic results. It encourages commercial prospecting in central and western regions, remote and border regions and regions inhabited by ethnic minorities, as well as other economically less-developed regions with resource[...] potential[...]. It encourages mining enterprises to carry out commercial geological prospecting in the outlying areas or the deeper formations of old mines with both market and resources potentials, and to find new substitute resources. It encourages investors to acquire exploration and mining rights, through fair competition, to sites of mineral deposits found[...] after prospecting with government investment. It encourages commercial prospecting for oil, natural gas, coal gas, coal with low ash and low sulfur contents, and fine-quality manganese, chromium, copper, aluminum, gold, silver, nickel, cobalt, metals of the platinum group, and sylvite. It also encourages the development of geothermal, mineral water and groundwater resources, in a scientific, economical and rational way, while encouraging the use of good-quality water for better purposes, and the prevention and control of pollution.

China will take the following measures to increase the domestic capability of mineral resources supply:

- Strengthen the exploration and exploitation of energy mineral resources. China has an abundance of coal resources, and there will be no major changes in the position of coal as China's main energy source in the near future. However, the energy structure with coal as its main source causes serious air pollution, and some adjustments must be made to it. China will make full use of its coal and hydro power resources, and develop cleaning technologies for coal, including coal washing, dressing, liquefying and gasifying technologies. The scale of coal production in the eastern regions will be stabilized, stress will be laid on the

development of the coal resources in Shanxi and Shaanxi provinces and the Inner Mongolia Autonomous Region, the coal resources in southwest China will be exploited in a rational way, and the coal resources in Xinjiang, Gansu, Ningxia and Qinghai will be exploited in an appropriate way. Greater efforts will be made to exploit coal bed methane. China boasts fairly rich oil resources, which, however, are insufficient to meet the demand. To solve the problem of insufficient oil and gas supply, China will first exploit and utilize its domestic oil and natural gas resources. Abundant petroleum resources have been discovered in the western regions. The Tarim and Junggar basins in Xinjiang, the Ordos Basin on the borders of Shaanxi, Gansu, Ningxia, Inner Mongolia and Shanxi, and the Qadam Basin in Qinghai all show great potential[...] for development. Important discoveries have also been made in the Bohai Sea area. In exploration and exploitation of oil resources, emphasis will be placed on prospecting work in the old oilfields on the basis of exploiting the deeper formations in the eastern regions, developing the oilfields in the western regions and accelerating the exploration of offshore oil and gas resources; at the same time, efforts will be exerted to make new discoveries in the new formations and regions to increase the verified oil reserves and maintain a rational rate of self-sufficiency in oil. In exploration and exploitation of natural gas resources, emphasis will be placed on the Tarim, Ordos and Qadam basins, and the Sichuan-Chongqing region along the west-east gas pipeline, as well as the East China Sea Basin, to increase the reserves, raise the output and gradually improve China's energy structure.

- Strive for a rational distribution of regional geological exploration and exploitation of mineral resources. The comparative advantages of the mineral resources in the western regions are [...] [significant], and their distribution is concentrated, thus providing the resources foundation for the formation of dominant pillar industries. Of the country's 158 minerals with proved reserves, 138 are found in the western regions. The more than 30 minerals found in the western regions, including coal, oil and gas, sylvite, chromite, rare earths, phosphorus, nickel, vanadium, manganese, copper, aluminum and zinc, [...] [offer] comparative resources advantages in the country. With the implementation of the western development strategy, the accelerated construction of infrastructure facilities and ecological protection will help to connect quickly the resources and the resource-related products of the western regions with [...] domestic and international markets, thereby greatly improving the conditions for the exploitation of mineral resources and the entry of mineral commodities into the market. The Chinese government encourages the commercial exploration of mineral resources, including oil, natural gas, coal gas, high-grade coal, copper, gold, high-grade manganese, sylvite and groundwater in the western regions, with emphasis on the resource-rich areas, to promote the rational exploitation and deep processing of oil, natural gas, non-ferrous metals, sylvite, phosphorus and other mineral resources in the western regions and accelerate the change from resource[...] advantage to economic advantage. In the central and eastern regions, emphasis will be placed on tapping the potentials of the mineral resources, strengthening their multipurpose use and expanding their processing industrial chain. Exploration of tungsten, tin, antimony, lead, zinc and rare earth resources will be started in accordance with the targets of the adjustment of the national industrial structure. Full play will be given to the advantages of the central and eastern regions in regional position and technologies in the exploitation of non-metallic minerals, so as to raise the level of deep processing and the degree of intensive utilization of non-metallic minerals, open new fields for their application and increase the market competitiveness of the products. At the same time, we will start the work of looking for substitute resources in existing mines in the central and eastern regions. Maritime areas under Chinese jurisdiction abound in mineral resources. The Chinese government will continue to strengthen the prospecting and exploitation of oil and gas resources in these areas and conduct research into other mineral resources, and take an active part in the international activities of seabed mineral resources research, prospecting and exploitation.



- Accelerate the structural adjustment of mineral resources exploitation and utilization. The degree of intensiveness and modernization of mineral resources exploitation in China is still somewhat low, and it is necessary to optimize the structure, innovate technologies and improve management in this regard. China will speed up the structural adjustment of mineral resources exploitation and utilization, increase productive capacity and raise efficiency. Through technological transformation of mining enterprises and improvement of their management mechanism, the Chinese government encourages the active introduction of clean production, and the application of mature and high and new technologies in mineral resources prospecting and exploitation, so as to raise the level of prospecting and exploitation. We shall introduce scale exploitation, raise the level of intensiveness and eliminate backward and scattered mining capacity. Mining enterprises which operate without licenses, cause environmental pollution, waste resources or do not have the proper conditions for safe operation shall be closed down in accordance with the law. Through market and policy guidance, we shall develop mining enterprise groups with international competitiveness. We shall continue to support and assist non-state-owned mining enterprises in their development.
- Raise the level of multipurpose utilization of mineral resources. Of China's proved mineral resources, there are fairly large quantities of low-grade resources which are still difficult [...] [to utilize] under the present technological and economic conditions. The exploitation and utilization of these resources is an important way to solve the shortage of mineral resource[...] supply. The Chinese government encourages the accelerated conversion of resources with poor economic workability into resources of economic workability by strengthening the construction of the necessary infrastructure facilities in the resource-rich regions, improving the external conditions for the construction of mines, using high and new technologies, and reducing the cost of exploitation. To achieve multipurpose utilization of the country's resources is one of China's important technological and economic policies on mineral resources prospecting and exploitation. China carries out comprehensive prospecting, overall evaluation, comprehensive exploitation and multipurpose utilization of mineral resources. It encourages and supports mining enterprises to exploit and utilize low-grade refractory resources, and encourages and supports them to develop and use substitute or secondary resources to increase the sources of resources supply and reduce production costs. It encourages mining enterprises to pool efforts to tackle difficult sci-tech problems and pursue technological transformation for the multipurpose utilization of the "three wastes" (waste slag, waste gas and waste liquid). It also encourages the recycling of scrap metals and secondary resources, as well as the active exploitation of non-traditional mineral resources. China issued the "Interim Provisions Concerning Certain Questions on the Multipurpose Utilization of Resources" in 1985, promulgated the "Opinions on Making Further Multipurpose Utilization of Resources," and published the "Catalogue of Resources for Multipurpose Utilization" in 1996. It has adopted preferential policies for the multipurpose utilization of mineral resources in the fields of enterprise income tax and value-added tax, and it encourages mining enterprises to raise the level of the multipurpose resources utilization [...] [through] scientific and technological progress and innovations.
- Save energy and reduce consumption. China encourages the development of technologies for deep-processing of mineral products, new energy sources and new material technologies as well as technologies and technical processes that save energy, materials and water, reduce consumption and raise the efficiency of resources utilization. We shall develop renewable sources of energy and nuclear power, increase the use of clean coal and CBM, and reduce the proportion of coal directly burned. We shall develop new metals, new non-metals and substitutes for conventional mineral materials and reduce the dependence of an economic society on conventional mineral materials.
- Establish a system [...] [of] reserves of strategic mineral resources. China will put the major strategic resources in the reserves order by stages and in groups, on the basis of the present situation concerning the supply and demand of mineral resources, as well as its national strength.

- Solve step by step the problem of substitute resources in old mines. Some of the large- and medium-sized state-owned mines in China have entered their middle or late stages, and have insufficient substitute resources. Some old mining enterprises can no longer continue their operations because their resources are exhausted. The Chinese government will increase its policy support for them by formulating rational financial and tax policies in line with the characteristics of mineral resources prospecting and exploitation, to create good external conditions for their survival and development. We shall encourage large old mines to look for substitute resources so as to prolong their service life.

#### **IV. Widening the Opening of, and Cooperation in, Mineral Resources Exploration and Exploitation**

*China will carry out its policy of opening to the outside world unswervingly. It will take an active part in international co-operation in the field of mineral resources to promote the exchange of domestic and foreign resources, capital, information, technology and markets on the basis of reciprocity and mutual benefit.*

*China implements the policy of encouraging foreign businesses to invest in mineral resources prospecting and exploitation in the country. China encourages domestic mining enterprises to cooperate with international mining companies, draw on advanced international experience, import advanced technology and operate in accordance with international practices. China began to open its oil industry to the outside world in 1982 by using foreign capital and technology to prospect and exploit oil and gas resources. As a result, the range of exploitation has been extended, and the output of crude oil has risen by big margins. Now, China has begun to participate in the exploitation of petroleum resources outside the country. The Chinese government has already taken or will take a number of new measures to further improve the environment for outward investment, widen the opening-up and strengthen international co-operation.*

- **Giving further encouragement to foreign businesses to invest in China.** China issued the "Opinions on Further Encouraging Foreign Investment at Present" in August 1999, the revised "Directory of Industries for Foreign Investment" in March 2002, and the "Catalogue of Dominant Industries for Foreign Investment in the Central and Western Regions" in June 2000. It clearly emphasizes that greater financial support will be extended to enterprises with foreign investment; encourages those enterprises to make technical innovations and increase domestic purchases; encourages foreign investors to invest in the central and western regions; and further improves the management and services for enterprises with foreign investment.
- **Further improving co-operation with foreign companies in prospecting and exploiting oil and gas resources.** *In the field of oil and gas resources, the Chinese government has always adopted the pattern of co-operation with foreign companies through one "window" based on product[ion]-sharing contracts, and this has been widely endorsed by foreign oil companies. China issued the revised Regulations on the Exploitation of Offshore Oil Resources in Cooperation with Foreign Enterprises and the Regulations on the Exploitation of Onshore Oil Resources in Cooperation with Foreign Enterprises in September 2001.*
- **Encouraging foreign businesses to make investment in exploration and exploitation of other mineral resources.** China issued the "Opinions on Further Encouraging Foreign Businesses to Make Investment in Exploring and Exploiting Mineral Resources Other Than Oil and Gas" in October 2000, thus further opening the prospecting and mining rights market to allow foreign businesses to start prospecting ventures with exclusive capital or in co-operation with Chinese partners, and guarantees their legal priority rights in exploiting the mineral resources of workable economic value in the zones explored. The prospecting and mining rights obtained by foreign businesses with such investment can be transferred according to law. Foreign businesses which invest in exploiting and recovering paragenous (associated) minerals, utilizing tailings, raising the rate of multipurpose utilization and exploration and exploitation of mineral resources in the western regions shall be entitled to reduction of or exemption from mineral resources compensation fees under a preferential policy. Foreign businesses which make exclusive investment or set up joint

ventures or cooperate with Chinese enterprises in exploiting mineral resources, the exploitation of which is encouraged in the "Directory of Industries for Foreign Investment," shall be exempted from mineral resources compensation fees for five years. It is stipulated that governments at all levels shall not start joint ventures or enter into co-operation with foreign investors in running mines, and in no way should they make irrational economic demands on foreign investors, make irrational inspections, requisition donations arbitrarily or collect charges other than those stipulated in the laws and regulations.

- **Further improving the environment for investment in exploring and exploiting domestic mineral resources.** The Chinese government sticks to the protocol on its accession to the WTO and other relevant commitments by annulling the administrative statutes and departmental rules incompatible with the WTO rules and gives national treatment to foreign investors in prospecting and exploitation. The Central Government shall guarantee the consistent implementation of the policies, laws and regulations of the state regarding mineral resources exploration and exploitation in all parts of the country, and standardize the behaviour of governments at all levels in exercising management over foreign investment in running mines. China has revised the rules for the management of geological data according to the WTO's principle of transparency, broadened the scope of geological data to be released to the public, and established an open information service system on mineral resources to ensure the availability of public geological data for foreign investors. It has clarified, simplified and standardized the approval procedure for foreign investment in mineral resources prospecting and exploitation.
- **Changing the import mechanism and operation mode.** In the course of taking the new [path] to industrialization and attracting foreign investors to make investment in mineral resources prospecting and exploitation, efforts will be made to shift from laying emphasis [only on importing funds to] placing equal emphasis on importing funds, technology, modern management and people with expertise, from the mere emphasis on bringing in foreign funds in prospecting and exploitation to the establishment of joint ventures and cooperation in the development of services and trade in the mining industry, and from dependence chiefly on foreign loans and direct foreign investment to the direct use of the international mining capital market.

China will continue to strive for mutual supplement[ation] with other countries in mineral commodities and promote the development of foreign trade in mineral products by expanding its international trade in mineral commodities according to the principle of reciprocity and mutual benefit. The Chinese government shall formulate a unified policy on the import and export of mineral products in accordance with the WTO rules and its commitments on its accession to the WTO, coordinate, in a unified way, the export of its dominant mineral products and the import of mineral products in short supply, adjust the import and export mix of mineral products, improve the economic results, and encourage the export of deep-processed mineral products with high added value and the import of primary mineral products. Direct import of mineral products will remain the chief way by which China utilizes foreign mineral resources for a fairly long time to come. The Chinese government shall gradually change the situation in which the proportion of the spot trade in mineral commodities, including crude oil, is too big at present, encourage the signing of long-term supply contracts with foreign companies, and import minerals from diversified sources. With regard to mineral resources in which China has advantages, such as tungsten, tin, antimony, rare earths, fluorspar and barite, the government will improve the export structure, increase the added value of the export products, standardize the order of export business, and actively urge the trade intermediary organizations to improve trade coordination and self-discipline, and promote the healthy development of the trade in domestic and foreign mineral products.

*The Chinese government encourages domestic enterprises to take part in international cooperation in the sphere of mineral resources, and in exploration, exploitation and utilization of foreign mineral resources. It will promote and protect investments in mineral resources prospecting and exploitation outside China, and standardize the investment and business operation behavior in accordance with international practices. It will actively develop co-operation with foreign companies in geological survey and mineral resources prospecting and exploitation, and promote bilateral and multilateral exchanges*

*and cooperation in the relevant scientific and technological fields.*

## **V. Achieving the Coordinated Development of Mineral Resources Exploitation and Environmental Protection**

Mineral resources prospecting and exploitation will change and affect the ecological environment around the mining areas. The Chinese government attaches great importance to environmental protection and the prevention and control of pollution in the course of exploiting and utilizing mineral resources, and strives for simultaneous development in mineral resources exploitation and environmental protection and pollution control. Environmental protection, pollution control and land rehabilitation in mining areas are explicitly stipulated in laws and regulations China has published and implemented. The Chinese government will continue to improve environmental protection in mining areas, and strengthen the work in the following aspects:

- **Continuing to adhere to the principle of placing equal stress on the exploitation and utilization of mineral resources and the protection of the ecological environment, by putting prevention first and combining prevention with control.** We shall strictly adhere to the system of environmental impact evaluation reporting, the system of land rehabilitation and the system of collecting fees for pollutant discharge in mining areas. We shall strictly adhere to the system whereby the construction of mines goes hand in hand with the designing, constructing and commissioning of environmental protection facilities. Active guidance will be given to enterprises in organizing clean and safe production in the course of mineral resources prospecting and exploitation.
- **Restricting the exploitation of mineral resources that produce considerable negative impacts on the ecological environment.** Strict control will be enforced on prospecting and exploitation in national conservation and other areas where the ecological conditions are weak. Mineral resources exploitation is forbidden in national conservation, important scenic areas and important geological protection areas, and mineral resources exploitation in ecological protection areas is strictly restricted. We shall strictly prohibit coking, metal refining and smelting, sulfur and vanadium refineries with indigenous methods. We shall restrict the building or rebuilding of mines producing coal with a sulfur content exceeding 1.5 per cent, and prohibit the building of mines producing coal with a sulfur content exceeding 3 per cent. We shall restrict the exploitation of mineral resources in areas liable to geological disasters, and prohibit the exploitation of mineral resources in areas with real danger from geological disasters. Unauthorized exploitation of mineral resources within a given distance on both sides of railway lines and major highways is forbidden.
- **Evaluating the impact on the ecological environment before starting a new mineral resources exploitation project.** Measures shall be taken to protect the ecological environment, avoid or reduce adverse effects or damage caused to the air, water, farmland, grasslands, forests and seas. A program for the exploitation and utilization of mineral resources shall include a plan for the protection of water and soil, a plan for land rehabilitation, a plan for the prevention and control of geological disasters in mining areas and an evaluation report on geological environmental impacts. These documents shall be submitted for approval as stipulated. We shall exercise stricter supervision and management over the control of the "three wastes" in mines, and strictly control the discharge of waste gas in accordance with the criteria stipulated by the state. We shall strengthen the control of poisonous and harmful waste water and other pollutants produced in mines, and offenders shall be severely dealt with.
- **Strengthening the investigation and monitoring of the environment and the prevention and control of disasters in mining areas.** The government shall organize nationwide investigations and evaluations of the ecological environment in mining areas. Mining enterprises shall strengthen investigation, monitoring, forecasting and early warning of disasters possibly induced in the course of the development of mines, promptly take effective measures to prevent and control them, and submit monitoring reports to the

competent departments of the local governments. An information network shall be established and emergency anti-disaster plans shall be worked out [for maximum prevention of sudden disasters].

- **Setting up a multi-source investment mechanism for environmental protection in mining areas.** We shall establish an agreement-honouring system for environmental protection and land rehabilitation in mining areas, and adopt government guidance and market operation to ensure the effective restoration and improvement of the environment there. With regard to abandoned mines and old mines, the state will strengthen the restoration and improvement of the ecological environment on the basis of demonstration projects, and encourage investment in this regard from society at large. We shall set up an investment mechanism for environmental control in mines still in production, with the mining enterprises playing the leading role. The enterprises shall provide the funds for environmental protection in new mines.

## VI. Improving the Management of Mineral Resources

In the past five decades and more since the founding of the People's Republic, China has gradually improved the management of its mineral resources, putting it on legal, standardized and scientific tracks.

- **Enacting and gradually improving the laws and regulations on mineral resources management.** China has put in place a legal system for its mineral resources, consisting of the "Mineral Resources Law" and other relevant laws and regulations, with the Constitution as its foundation. Since 1982, China has successively promulgated the *Mineral Resources Law*, *Land Administration Law*, *Coal Law*, *Law on Safety in Mines*, *Environmental Protection Law*, *Marine Environmental Protection Law* and *Law on the Use and Management of Sea Areas*. The Chinese government has also issued more than 20 supplementary statutes and regulations, including the *Detailed Rules for the Implementation of the Mineral Resources Law*, *Regulations on the Exploitation of Offshore Oil Resources in Cooperation with Foreign Enterprises*, *Regulations on the Exploitation of Onshore Oil Resources in Cooperation with Foreign Enterprises*, *Measures Governing the Registration and Management of Areas for Surveying Mineral Resources*, *Measures Governing the Registration and Management of Mineral Resources Exploitation*, *Measures Governing Administration of the Transfer of Prospecting and Mining Rights*, *Provisions on the Administration of the Collection of Mineral Resources Compensation Fees*, *Interim Measures on the Supervision and Control of Mineral Resources*, and *Regulations on the Management of Geological Data*. The various provinces, autonomous regions and municipalities directly under the Central Government have, in addition, formulated relevant local statutes. These laws and regulations have put in place China's basic legal system for the management of its mineral resources, and provided the legal guarantee for exercising administration, managing mineral resources and operating mines according to law.
- **Deepening the reform of the mineral resources management system.** To constantly meet the requirements for economic restructuring, China has reformed the mineral resources management system, changed and strengthened government functions, and separated government functions from enterprise and institution management. From 1950 to 1981, the former Ministry of Geology and other relevant industrial administration departments exercised management over the country's mineral resources. The geological departments chiefly performed the functions of organizing nationwide geological survey and prospecting, managing the reserves of mineral resources and controlling the collection and exchange of geological data, while the relevant industrial administration departments were responsible for the management of mineral resources exploitation. In 1982, the Ministry of Geology changed its name to the Ministry of Geology and Mineral Resources, and became responsible for the supervision and management of mineral resources exploitation as well as the industrial management of geological survey and prospecting. When the government was reorganized in 1988 and 1993, it [further clarified] the four basic functions of the Ministry of Geology and Mineral Resources—exercising comprehensive management of mineral resources, exercising industrial management of geological survey and prospecting, exercising supervision and management of the rational exploitation, utilization and protection of mineral resources, and

exercising management of the monitoring, evaluation and supervision work regarding the geological environment. The National Mineral Resources Commission was established in January 1996 to strengthen the centralized management function of the Central Government over mineral resources and safeguard the rights and interests of the state as the owner of the country's mineral resources. The government was restructured again in 1998, and the functions of mineral resources management belonging to the State Planning Commission and the coal and metallurgical industrial departments were transferred to the Ministry of Land and Resources, to achieve the centralized management of mineral resources of the whole country. At present, over 90 per cent of the country's prefectures and cities, and more than 80 per cent of the counties have set up land and mineral resources administration organs.

- **Strengthening the management of mineral resources planning.** The plan regarding mineral resources is the guiding document for the survey, exploitation and utilization of the country's mineral resources and the basis for exercising macro control. The Chinese government is further strengthening mineral resources planning, improving the planning system, fixing strict planning responsibility, check-up, announcement, revision and compilation and supervision systems, strengthening publicity work concerning the plans, and setting up a system for ensuring the implementation of the plans and information feedbacks, to guarantee the fulfillment of the planned targets.
- **Reforming the management system for mineral resources prospecting and mining rights.** The Constitution and the "Mineral Resources Law" of China explicitly state that "mineral resources are owned by the state." The State Council exercises the state ownership of the mineral resources. At the same time, China has reformed the management system for mineral resources prospecting and mining rights, clearly defined the property right attribute of the prospecting and mining rights, and established the system of acquisition of prospecting and mining rights with compensation and the transfer of them according to law. China has established a legal system whereby the holder of the prospecting right enjoys priority in acquiring the mining right in the area explored, and strengthened the exclusiveness of the prospecting and mining rights. It has changed the limits of authority regarding giving approval to mineral resources prospecting and exploitation and issuing the prospecting and mining licenses. [P]rospecting and mining rights can be obtained with compensation by such means as competition through bidding, auction and listing. The transfer of prospecting or mining rights shall follow market rules, be subject to approval from government departments, and go through the procedure for transfer according to law. The Chinese government will continue to cultivate and standardize the prospecting and mining rights market, and exercise stricter supervision and control over the operation of the market in accordance with the requirements of clearly defined ownership, complete rules, effective regulation and control, and standard operation.
- **Improving the system of compensation for the use of mineral resources.** China's "Mineral Resources Law" clearly provides for the system of compensation for the use of mineral resources. The Chinese government started levying compensation fees for mineral resources from the holders of mining rights in 1994, thus terminating the history of compensation-free mining in China. The collection of compensation fees for mineral resources (fees for the use of mining areas in co-operative development of petroleum resources offshore or onshore) embodies the rights and interests of the state as the owner of the mineral resources, and is conducive to establishing an economic incentive mechanism to promote the protection and rational utilization of mineral resources. The compensation fees for mineral resources collected by the Chinese government are included in the state budget; they are specially managed and used chiefly in mineral resources prospecting. Holders of mining rights who conform to the stipulations of the laws and statutes shall have their compensation fees remitted or reduced. The Chinese government has stipulated that, beginning in 1998, it will collect fees for the use of prospecting and mining rights, and the costs for the prospecting and mining rights formed in the course of prospecting with state investment from the holders of prospecting and mining rights. Fees and costs for the use of prospecting and mining rights shall be remitted or reduced for mineral resources exploration and exploitation [that] meet the requirements

in the western regions, regions inhabited by ethnic minorities, remote and poor regions designated by the government, and offshore areas.

- **Rectifying and standardizing the order of mineral resources management.** Good order in the mineral resources management is a prerequisite for the protection and rational utilization of mineral resources. Since the “Mineral Resources Law” was promulgated in 1986, Chinese legislative organs have organized examinations on law enforcement on many occasions. Since 1995, the Chinese government has rectified the order of mineral resources management on a large scale throughout the country, resulting in some improvement in the order of mineral resources management. The Chinese government will continue to intensify supervision over the enforcement of the law, rectify and standardize the order of mineral resources management, strengthen supervision over production safety, safeguard the rights and interests of the state as the owner of mineral resources and the legitimate rights and interests of the holders of prospecting and mining rights.
- **Improving the services of the government departments.** It is necessary to improve the style of service and make the appropriate administrative affairs known in accordance with the requirements of being open, transparent, standardized and highly efficient. Mineral resources administrative departments at all levels shall [provide information to the general public regarding] their work system, matters for approval, important documents, standards and time limits, and subject themselves to public supervision. They shall establish systems for internal joint hearings, handling procedures or documents at windows, and ascertaining administrative responsibilities. They shall establish a communiqué system, release information on the mineral reserves and the progress in mineral resources exploration and exploitation, and gradually make the geological data and information known to the general public. They shall establish a system for access to information so that the general public can promptly inquire about the state plan, policies, laws and statutes concerning mineral resources, and criteria for the classification of the reserves of the resources, seek information on the registration of prospected areas, on registration of exploitation, and rates of compensation fees for mineral resources and ways of payment. At the same time, they shall make great efforts to apply information technology, raise their work efficiency and improve their services.

China is a developing country with a large population and a relative shortage of resources. China will continue to deepen [its reforms], widen the opening-up, develop the socialist market economy unswervingly, take the road of sustainable development, and rationally use and protect its resources. *China will, as usual, take an active part in international co-operation for the development of resources and environment[al] protection, and join hands with all other countries in the world in advancing boldly to achieve the sustainable development of human society.*

#### **43. Supplementary Circular on the Support of the Prior Period Expenses of Overseas Investments in Resource and Foreign Economic Cooperation Projects in 2004 (MOFCOM & Ministry of Finance, June 2005)**

Source: Ministry of Commerce website. Retrieved from [http://www.fdi.gov.cn/pub/FDI\\_EN/Laws/law\\_en\\_info.jsp?docid=51042](http://www.fdi.gov.cn/pub/FDI_EN/Laws/law_en_info.jsp?docid=51042)

The financial departments (bureaus) and competent departments of commerce of all provinces, autonomous regions, cities directly under the central government and the cities specifically designated in the state plan, the Bureau of Finance and Bureau of Commerce of Xinjiang Production and Construction Corps, and all Chinese economic and commercial institutions abroad and all enterprises under the central authorities:

The Ministry of Finance and the Ministry of Commerce jointly promulgated the *Circular of the Ministry of Finance and the Ministry of Commerce on the Support of the Prior Period Expenses of Overseas Investment in Resource and Foreign Economic Cooperation Project* in 2004 (Cai Qi [2004] No.176, hereinafter referred to as the “Circular”) with a view to implementing the “going [global]” strategic spirit of the 16th National Congress of the CPC, encouraging and supporting ... enterprise[s] with comparative advantage[s] to conduct overseas investment in resource[s] and

to use overseas resources to develop foreign economic technologic[al] cooperation[. A]fter deliberation, related issues are supplemented as follows in accordance with the requirements of business:

I. The foreign economic cooperation project[s] concerning resource[s] as referred to in Article 1 of the Circular means the foreign contract projects conducted in [the field of] overseas resource[s], the foreign contract projects with the resource as means of payment or the foreign contract projects purporting to obtain the [right to exploit, develop, and use the resource].

II. Paragraph 5 of Article 4 of the Circular stipulates that "the registration of overseas enterprise or the concluding time of contract shall be between January 1, 2004 and December 31, 2004," and in considering the real circumstances and the continuity of business, this paragraph is amended to be "the registration of overseas enterprise or the [conclusion of the] contract shall be between January 1, 2003 and December 31, 2004[.]"

III. With respect to ... projects concerning resource[s] [other] than the projects specially supported, the enterprise may submit [an] application; the Ministry of Finance and the Ministry of Commerce will conduct whole consideration of the support of special projects.

IV. The [time for submitting the application] material[s] is postponed for 15 days with a view to enhancing the application of enterprise[s] and the dissemination and preliminary examination by local authorities in charge. The enterprise shall prepare and submit materials in strict accordance with the provisions of documents and the requirements in the attachment. The subordinated enterprises to the enterprises directly under the central authority shall be examined and submitted in a unified way by the group.

V. In order to decrease the workload in the application of the enterprise, the application request submitted jointly by all authorities at [the] provincial level shall be delivered to the Ministry of Finance (Department of Enterprise) and the Ministry of Commerce (Department of Planning and Finance). One copy of the specific applying material and the application request shall be delivered to the Ministry of Commerce (Department of Planning and Finance).

It is thereby notified.

The attachment:

1. The project-compiling guide
2. The account for application of enterprise
3. The Opinion of [the] Chinese Economic and Commercial Counselor's Office in (location)
4. Schedule of the fees in the preliminary stage of the overseas investment in resource[s] and the foreign economic cooperation project
5. The summary schedule of the preliminary examination of the fees in the preliminary stage of the overseas investment in resources and the foreign economic cooperation project.

Attachment 1:

The Project-Compiling Guide

- I. The enterprise shall, depending on projects, bind up all submitted materials in volumes in the way [that] the accounting books are bound up;
- II. The material for each project shall include but not [be] limited to the following material[:]



(1) Cover. [T]he contents of the cover include: the nature of the project (overseas investment or economic cooperation); the name of the project (the location of the project, the name of the mine, and the name of the overseas enterprise [Chinese and English]); [and] the name of the project applying enterprise (with common seal).

(2) The list of the materials of the project submitted.

(3) The application report of the project. The application shall include: the basic information of the enterprise; the basic investment of the project (or contractual amount), the total prior period expenses and the amount applied for support, etc.

(4) An account for the application of the project (see Attachment 2).

(5) The business license of the project applying enterprise.

(6) The approval certificate of [the] related authority for [the] overseas investment project or for [the] project contract and relevant certificate for passing [the] annual examination.

(7) The business license registered in the country where the project is located ([in] Chinese and English).

(8) The account material of the economic and commerce counselor's office of China in the country where the project is located.

(9) The approval certificate of [the] foreign exchange administrative authority for foreign exchange verification and fund remittance.

(10) The record table of the overseas mine resource development project.

(11) The audited report of the applying enterprise of 2003 and 2004.

(12) The project feasibility study report ([in] Chinese).

(13) The investment (economic cooperation project) contract (only provide the Chinese and English versions of the relevant part concerning the prior period expenses).

(14) The schedule of the prior period expenses (see attachment 4).

(15) The prior period expenses proof of the project, including, payment voucher, accounting voucher, fees payment contract, the payment voucher with a single fee exceeding CNY100,000 shall add common seal on the copies thereof.

III. The materials submitted by the provincial authorities (including the enterprise under central authority, the same below) shall include the following contents:

(1) The application report of preliminary fees jointly submitted to the Ministry of Finance and the Ministry of Commerce.

(2) The Summary of the prior period expenses of the overseas investment in resource[s] and the foreign economic cooperation project (see attachment 5)

(3) The materials of the project applying enterprise that [have] been bound in volumes.

[Attachments 2-5 are not reproduced here, but are available at the link]

#### **44. Policies for Development of Iron and Steel Industry (State Council & NDRC, July 2005).**

Retrieved from [http://www.fdi.gov.cn/pub/FDI\\_EN/Laws/law\\_en\\_info.jsp?docid=51277](http://www.fdi.gov.cn/pub/FDI_EN/Laws/law_en_info.jsp?docid=51277)

[Only relevant excerpts of the policies are provided below].

#### **Chapter 7: Policy of Raw Materials**

...

**Article 30** We should, according to the principles of making their advantages complement each other and achieving ... win-win situation[s], intensify ... international co-operation regarding overseas mineral resources. We should support those large backbone enterprise groups to establish overseas production and supply[] bases of iron mines, chrome ore mines, manganese mines, nickel ore mines, waste steel and coking coal, etc. by way of setting up solely funded enterprises, joint-equity enterprises, contractual enterprises and purchase of mineral resources. For such important raw materials and auxiliary materials as bulk ores and coke as needed by the enterprises in coastal areas, the state encourages them to solve it by way of overseas market[s].

The iron and steel industrial association shall do a good job [of] industrial self-discipline and coordination and stabilizing the raw material market both at home and abroad. Where two or more domestic enterprises are engaged in vicious competition for overseas resources, the state may adopt administrative coordination to hold [an] alliance or select one of them to make investment so as to avoid vicious competition. The relevant enterprises shall be subject to the administrative coordination of the state.

The export of such preliminarily processed products as coke, iron alloy, pig iron, waste steel and steel base (ingot) with high energy-consumption and serious pollution shall be restricted and the tax refund for export of these products shall be decreased or canceled.

...

#### **45. Circular on the Issues on Offering More Financing Support to Key Overseas Investment Projects (NDRC & China State Development Bank, September 2005)**

Unofficial translation from the Asian Legal Information Institute. Retrieved from <http://www.asianlii.org/cn/legis/cen/laws/cosdarcasdbocatrioomfstkop1690/>

Note by the editors: For text, see Document 20 above.

#### **46. Circular on Printing and Distributing the Measures for Administration of Special Venture Capital for the Exploration of Overseas Mineral Resources (MOF, Ministry of Land and Resources, May 2010)**

Retrieved from: [http://jjs.mof.gov.cn/zhengwuxinxi/zhengcefagui/201007/t20100722\\_329313.html](http://jjs.mof.gov.cn/zhengwuxinxi/zhengcefagui/201007/t20100722_329313.html)

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Relevant central entities, financial departments (bureaus) of all the provinces, autonomous regions, municipalities directly under the Central Government and the cities specifically designated in the state plan, Land and Resources Departments (bureaus):

For the purpose of strengthening the administration of special venture capital for the exploration of overseas mineral resources, and enhancing the capital profit, we formulated the Measures for Administration of Special Venture Capital for the Exploration of Overseas Mineral Resources. It is hereby printed and distributed to you, please implement it accordingly.

## **The Measures for Administration of Special Venture Capital for the Exploration of Overseas Mineral Resources**

### **Chapter I General Provisions**

1. In order to strengthen the management of the special fund for overseas mineral resource venture exploration (Hereinafter referred to as the "Special Fund"), and promote the fund application benefit, the Measures are formulated hereby.
2. Established by the Central Finance, the Special Fund is mainly used to encourage and guide the geological exploration institutions and mining enterprises to explore and develop the mineral resources in overseas countries, including:
  - 1) The prophase geological and mineral investigation and assessment conducted for the acquisition of the mining license, as well as the comprehensive research, information service and management;
  - 2) The preliminary exploration, general exploration and detailed exploration on the mineral resources for which the mining license has been obtained (Hereinafter referred to as the "mineral resource exploration");
  - 3) The mineral resource prospecting and mine construction (hereinafter referred to as "mineral resource development").
3. The Special Fund shall be used mainly to support the exploration and development of projects implemented by the geological exploration institutions and mining enterprises in overseas countries for mineral resources (not including petroleum and natural gas), that are in short supply and much needed in China for the development of the national economy.
4. The Special Fund shall be subject to the management jointly by the Ministry of Finance and the Ministry of Land and Resources, which shall authorize the organs subordinate to the Ministry of Land and Resources to take responsibility for the specific works.
5. The Special Fund shall be subject to project management, and be earmarked only for its specified purpose. Any retention, occupation and embezzlement are strictly forbidden.

### **Chapter II Conditions and Modes of Support**

6. The project for which the application is filed for the Special Fund shall conform to the following fundamental conditions:
  - 1) Conforming to national laws and regulations and industrial policies, without prejudice to the national sovereignty, security and public interests;
  - 2) Conforming to the laws of the country in which the project is located and the established principles of international law;
  - 3) Having the guarantee conditions for implementing the project, including the raw material, fuel, power, main equipment and communication and transportation;

- 4) Having the good internal and external conditions in project location, and the better social or economic benefits arising from the implementation of the project;
  - 5) Other conditions required by the Ministry of Finance and the Ministry of Land and Resources.
7. The project of prophase geological and mineral investigation and assessment shall meet the following requirements:
- 1) The international cooperation project under the framework of the geological and mineral cooperation memorandum of understanding or the cooperation agreement entered into between Chinese government and the government of the cooperating country;
  - 2) The project has been granted the approval by the competent mineral resource authority of the country in which the project is located, or the contract (agreement) has been entered into with the relevant authority of the country in which the project is located.
8. Projects of mineral resource exploration and development project shall meet the following requirements in addition to satisfying the requirements laid down in the preceding article:
- 1) The mining enterprise invested and established overseas shall have been approved by the competent authority of the country, and the mineral resource exploration and development project has been approved (authorized or archived) by the competent authority of the country;
  - 2) The project organization holds the project's mining rights solely or jointly with the foreign joint venture and cooperator;
  - 3) Achievements resulting from the mineral resource exploration project with the development values and results shall be transferred to domestic enterprise for development or developed by the applicant organization independently or jointly with the domestic enterprise.
9. Supporting mode of the Special Fund:
- 1) For the prophase geological and mineral investigation and assessment, as well as comprehensive research, information service and management projects, the support of the fund in certain amount shall be offered from the Special Fund;
  - 2) For mineral resource exploration projects, the Special Fund shall offer the support by means of voluntary allowance in the amount not more than 50 per cent of the total Chinese investment in the project;
  - 3) For mineral resource development projects, the Special Fund shall offer the support by means of a loan discount. The discount fund shall be determined according to the amount of the medium and long-term loan paid in by the domestic bank, the interest rate as agreed in the contract and the actually paid amount of the interest. The discount shall be valid for one to three years. The maximum annual discount rate shall not exceed 3 per cent.
10. The Special Fund shall give priority to the support of mineral resource exploration projects invested jointly by the project organization and other domestic organs.
11. The Special Fund shall not offer support to enterprise mergers and other reorganization projects as well as projects for the sole purpose of purchasing mining rights.

### Chapter III Project Review and Budget Management

12. The Ministry of Land and Resource shall work with the Ministry of Finance to issue the Special Fund project application guidance according to the relevant requirements of the national strategy of “Going Global.”

The project organization filing the application for the Special Fund shall prepare the application materials according to the requirements of the project application guidance.

13. The project applied by the organization put under centralized management of the related central department and the central enterprise shall be reviewed and collected by the competent department (enterprise) and then submitted to the Ministry of Finance and the Ministry of Land and Resources.

The project applied by the organization not subordinate to the Central Committee shall be reviewed and collected by the financial section at the provincial level jointly with the land and resources management section based on the principle of territorial jurisdiction and then submitted to the Ministry of Finance and the Ministry of Land and Resources.

14. Except for special circumstances, the application material for the Special Fund shall be accepted for the period from January 4 to May 31 of every year.

15. The Ministry of Finance and the Ministry of Land and Resources shall organize experts to review and demonstrate the project to be applied.

16. The Ministry of Finance and the Ministry of Land and Resources shall determine the budget of the project according to the project review and demonstration results, and transit the budget to the lower level according to the budget management process.

17. The Special Fund shall be appropriated according to the relevant provisions of the financial treasury management system.

18. The Special Fund shall be subject to financial accounting according to the financial accounting system implemented by the domestic organization undertaking the project and the relevant regulations of the state in which the project is located.

### Chapter IV Supervision and Management

19. The Ministry of Finance and the Ministry of Land and Resources shall organize the supervision and inspection of the utilization of the Special Fund, and implement the performance assessment on the project under the Special Fund.

20. The related central department, central enterprise, financial department at provincial level and the land and resources department shall strengthen the supervision and management of the Special Fund, and establish the restraint mechanism for the utilization of the Special Fund. Major events shall be reported to the Ministry of Finance and the Ministry of Land and Resources immediately.

21. The organization undertaking the project shall strictly abide by the relevant national financial and accounting system, and cooperate actively with the relevant department for supervision and inspection.

22. The organization undertaking the project shall prepare reports on the project progress and the fund utilization as required, and submit it to the Ministry of Finance and the Ministry of Land and Resources prior to July 10 of the year and prior to January 10 of the next year respectively while sending a duplicate to the competent central department (enterprise) or the financial department and land and resources department at the provincial level.

23. After the completion of the prophase geological and mineral investigation and assessment project and the mineral resource exploration project, the organization undertaking the project shall deliver the project achievement report to the Ministry of Land and Resources immediately, and collect and send the geological data to the National Geological Archives by reference to the scope of the geological data collection as stipulated in the "Geological Data Management Regulations."

24. In case of the retention, occupation and embezzlement of the Special Fund, or the loss of the Special Fund due to breach of the Measures, the provisions of the "Regulations on Penalties and Sanctions Against Illegal Fiscal Acts" shall apply. In case of suspected crime, it shall be transferred to the judicial organ.

### **Chapter V Supplementary Provisions**

25. The geological exploration institution referred to in the Measures means the enterprise and institution with the geological exploration qualification at Grade A.

The mining enterprise referred to in the Measures means the enterprise registered at the industrial and commercial administration with the business scope covering the development and utilization of mineral product, mineral resource exploration, mining and dressing of the minerals.

26. The Measures shall come into effect on June 1, 2010. The "Interim Measures for Management of Special Fund for Foreign Mineral Resource Venture Exploration" (Cai Jian [2005] No. 637) promulgated by the Ministry of Finance on October 31, 2005 shall be abolished accordingly.

### **47. White Paper: China's energy conditions and policies (State Council, December 2007)**

Source: Ministry of Commerce website. Retrieved from <http://english.mofcom.gov.cn/aarticle/subject/ccs/lanmuc/200802/20080205397124.html>

The Information Office of the State Council published a white paper titled "China's Energy Conditions and Policies" on Wednesday. Following is the full text:

[Aspects of the texts that are particularly relevant for outward investment are italicized].

China's Energy Conditions and Policies

Information Office of the State Council of the People's Republic of China

December 2007

### **Preface**

Energy is an essential material basis for human survival and development. Over the entire history of mankind, each and every significant step in the progress of human civilization has been accompanied by energy innovations and substitutions. The development and utilization of energy has enormously boosted the development of the world economy and human society.

Over more than 100 years in the past, developed countries completed their industrialization, consuming an enormous quantity of natural resources, especially energy resources, in the process. Today, some developing countries are ushering in their own era of industrialization, and an increase of energy consumption is inevitable for their economic and social development.

China is the largest developing country in the world, and developing its economy and eliminating poverty will, for a long time to come, remain the main tasks for the Chinese government and the Chinese people. Since the late 1970s, China, as the fastest growing developing country, has scored brilliant achievements in its economy and society that have attracted worldwide attention, successfully blazed the trail of socialism with Chinese characteristics, and made significant contributions to world development and prosperity.

China is now the world's second-largest energy producer and consumer. The sustained growth of energy supply has provided an important support for the country's economic growth and social progress, while the rapid expansion of energy consumption has created a vast scope for the global energy market. As an irreplaceable component of the world energy market, China plays an increasingly important role in maintaining global energy security.

Guided by the Scientific Outlook on Development, the Chinese government is accelerating its development of a modern energy industry, taking resource conservation and environmental protection as two basic state policies, giving prominence to building a resource-conserving and environment[ally] friendly society in the course of its industrialization and modernization, striving to enhance its capability for sustainable development and making China an innovative country, so as to make greater contributions to the world's economy and prosperity.

### I. Current Situation of Energy Development

Energy resources are the basis of energy development. Since New China was founded in 1949, it has made constant endeavours in energy resources prospecting, and conducted several resource[] assessments. China's energy resources have the following characteristics:

- **Energy resources abound.** China boasts fairly rich fossil energy resources, dominated by coal. By 2006, the reserves of coal stood at 1,034.5 billion tons, and the remaining verified reserves exploitable accounted for 13 per cent of the world total, ranking China third in the world. The verified reserves of oil and natural gas are relatively small, while oil shale, coal-bed gas and other unconventional fossil energy resources have huge potential for exploitation. China also boasts fairly abundant renewable energy resources. In 2006, the theoretical reserves of hydropower resources were equal to 6,190 billion kWh, and the economically exploitable annual power output was 1,760 billion kWh, equivalent to 12 per cent of global hydropower resources, ranking the country first in the world.
- **China's per-capita average of energy resources is very low.** China has a large population, resulting in a low per-capita average of energy resources in the world. The per-capita average of both coal and hydropower resources is 50 per cent of the world's average, while the per-capita average of both oil and natural gas resources is only about one-fifteenth of the world's average. The per-capita average of arable land is less than 30 per cent of the world's average, which has hindered the development of biomass energy.
- **The distribution of energy resources is imbalanced.** China's energy resources are scattered widely across the country, but the distribution is uneven. Coal is found mainly in the north and the northwest, hydropower in the southwest, and oil and natural gas in the eastern, central and western regions and along the coast. But, the consumers of energy resources are mainly in the southeast coastal areas, where the economy is the most developed. Such a great difference of location between the producers and the consumers has led to the following basic framework of China's energy flow: large-scale transportation over long distances of coal and oil from the north to the south, and transmission of natural gas and electricity from the west to the east.
- **The development of energy resources is fairly difficult.** Compared with other parts of the world, China faces severe geological difficulties in tapping its coal resources, and has to get most of its coal by underground mining, as only a small amount can be mined by opencast methods. Oil and gas resources are located in areas with complex geological conditions and at great depths, so advanced and expensive prospecting and tapping techniques are required. Untapped hydropower resources are mostly located

in the high mountains and deep valleys of the southwest, far from the centers of consumption, entailing technical difficulties and high costs. Unconventional energy resources are insufficiently prospected, their development is neither economical nor competitive.

Since the reform and opening-up policies were introduced in China in the late 1970s, the country's energy industry has witnessed swift growth and made great contributions to the sustained and rapid growth of the national economy, with the following demonstrations:

- **The energy supply capability has been remarkably enhanced.** Thanks to the efforts made over the past few decades, China has built an energy supply framework with coal as the main energy resource and electricity as the focus, featuring an overall development of oil, gas and renewable resources. A fairly complete energy supply system is now by and large in place. China has built a group of extra-large coalmines each with an annual output of over ten million tons. In 2006, the output of primary energy equaled 2.21 billion tons of standard coal, ranking second in the world. Of this, raw coal accounted for 2.37 billion tons, ranking first in the world. Daqing, Shengli, Liaohe, Tarim and other large oilfields have been successively built as oil production bases, and the output of crude oil has increased steadily, ranking China the world's fifth-largest oil producer in 2006, with 185 million tons in that year. The output of natural gas ballooned from 14.3 billion cubic metres in 1980 to 58.6 billion cubic metres in 2006. The proportion of commercial renewable energy in the structure of primary energy keeps rising. The electricity sector also reported speedy growth in 2006. The installed capacity reached 622 million kWh, and the amount of power generated was 2,870 billion kWh, both ranking second in the world. A comprehensive energy transportation system has been developed quickly, with the transport capacity notably improved. Special railways transporting coal from the west to the east and relevant coal ports, and pipelines transporting oil from the north to the south and conveying natural gas from the west to the east have all been built. Now, the power generated in the west can be carried to the east, and the regional power grids have all been connected up.
- **Energy-saving effects are [notable].** During the period 1980–2006, China's energy consumption increased by 5.6 per cent annually, boosting the 9.8-per cent annual growth of the national economy. Calculated at 2005 constant prices, the energy consumption for every 10,000 yuan of GDP dropped from 3.39 tons of standard coal in 1980 to 1.21 tons in 2006, making the annual energy-saving rate 3.9 per cent, putting an end to the rising trend of per-unit GDP energy consumption. The comprehensive utilization efficiency in the processing, conversion, storage and end-use of energy was 33 per cent in 2006, up eight percentage points over 1980. Per-unit product energy consumption has dropped noticeably, and the gaps between the overall energy consumption, the net energy consumption rate of electricity generation for steel and cement production as well as synthetic ammonia produced by plants with an annual output of 300,000 tons or more and the international levels are narrowing.
- **The consumption structure has been optimized.** China is the world's second-largest energy consumer. In 2006, its total consumption of primary energy was 2.46 billion tons of standard coal. China pays great attention to improving its energy consumption structure. The proportion of coal in primary energy consumption decreased from 72.2 per cent in 1980 to 69.4 per cent in 2006, and that of other forms of energy rose from 27.8 per cent to 30.6 per cent, with that of renewable energy and nuclear power rising from 4.0 per cent to 7.2 per cent. The shares of oil and gas have increased. The end-use energy consumption structure is noticeably optimized, and the proportion of coal converted into power increased from 20.7 per cent to 49.6 per cent. More commercial energy and clean energy are being used in people's daily [lives].



- **The scientific and technological level has been rapidly enhanced.** China has scored [notable] scientific and technological achievements relating to energy. The fundamental research findings, represented by the “continental hydrocarbon generation theory and its application,” have greatly promoted the development of the scientific theory of oil geology. A fairly complete system of exploration and development technologies has taken shape in the oil and gas industry, with prospecting and development techniques in geologically complicated regions and the recovery ratio of oilfields leading the world. Large coalmines of the world’s advanced level have been built, and the totally mechanized mining of key coalmines has been noticeably improved. In the power industry, advanced generating technology and units with large capacity and high parameters are widely used, and the designing, engineering and equipment manufacturing of hydraulic power plants have reached the world’s advanced level. China is now able to independently design and build million-kw pressurized water reactors, and has made outstanding breakthroughs in the development of high-temperature gas-cooled reactors and fast-neutron-breeder reactors. The technologies to deal with pollution such as flue gas desulphurization (FGD) and renewable energy development and utilization are quickly being improved. Models of 500 kv DC and 750 kv AC electricity transmission projects have been completed and put into operation, and pilot 800 kv DC and 1,000 kv AC extra-high-voltage electricity transmission projects are under way.
- **Progress has been made in environmental protection.** The Chinese government sets great store by environmental protection, and has made it a fundamental state policy to strengthen environmental protection. Public awareness of environmental protection has been raised. After the 1992 UN Conference on the Environment and Development, China worked out its “21st Century Agenda,” and has reinforced environmental protection in an all-round way through legislative and economic means, making positive progress in this regard. China’s energy policies give priority to the reduction and rehabilitation of environmental damage and pollution resulting from energy development and utilization. In 2006, coal-fueled generating units reported a nearly 100 per cent installation rate of dust-cleaning facilities and a nearly 100 per cent discharge of waste water up to relevant standards. The amount of smoke and dust discharged in 2006 was almost the same as that in 1980, and the dust emission per-unit of electricity had decreased by 90 per cent. The installation capacity of thermal power units with FGD built and put into operation in 2006 totaled 104 million kWh, exceeding the combined total of the previous 10 years. Such thermal power units accounted for only 2 per cent of all thermal power units in 2000, but the proportion had risen to 30 per cent by 2006.
- **The environment of energy market is gradually improved.** The environment of China’s energy market is gradually improved, and the reform in the energy industry is proceeding steadily. Breakthroughs have been made in restructuring energy enterprises, and a modern enterprise system has by and large taken shape. The investors are diversified, energy investment is growing rapidly, and the market is expanding. Market competition has been introduced into the production and distribution of coal. In the power industry, government administrative functions and enterprises’ management have been separated, so has power production from power transmission, and supervisory organizations have also been established. In the oil and gas industry, the upstream and downstream sectors have been integrated, so have the domestic and international trades. Energy pricing reform has been constantly deepened, and the pricing mechanism has been improved continuously.

Along with China's rapid economic development and the acceleration of industrialization and urbanization, the demand for energy keeps increasing, and the construction of a stable, economical, clean and safe energy supply system faces the following challenges:

- **Prominent resources restraint and low energy efficiency.** China's relative dearth of high-quality energy resources hinders its supply capability; its imbalanced distribution makes it difficult to secure a continued and steady supply; and the extensive pattern of economic growth, irrational energy structure, unsatisfactory energy technology and relatively poor management have resulted in higher energy consumption per-unit GDP and for the major energy-consuming products than the average level of major energy-consuming countries, thus further intensifying the energy supply-demand contradiction. Consequently, an increase solely in supply is hard to meet the rising demand for energy.
- **Increasing environmental pressure caused by the consumption of energy, mostly coal.** Coal is the main energy consumed in China, and the energy structure with coal playing the main role will remain unchanged for a long time to come. The relatively backward methods of coal production and consumption have intensified the pressure on environmental protection. Coal consumption has been the main cause of smoke pollution in China, as well as the main source of greenhouse gas. As the number of motor vehicles climbs, the air pollution in some cities is becoming a mixture of coal smoke and exhaust gas. If this situation continues, the ecological environment will face even greater pressure.
- **Incomplete market system and emergency response capability yet to be enhanced.** China's energy market system is yet to be completed, as the energy pricing mechanism fails to fully reflect the scarcity of resources, its supply and demand, and the environmental cost. Order in energy exploration and development must be further standardized, and the energy supervisory system improved. Coal production safety is far from satisfactory, the structure of power grids is not rational, the oil reserves are not sufficient, and an effective emergency pre-warning system is yet to be improved and consolidated to deal with energy supply breakdowns and other major unexpected emergencies.

## II. Strategy and Goals of Energy Development

China's energy development emphasizes thrift, cleanliness and safety. Believing that development is the only way for its survival, China solves problems emerging in the process of advancement through development and reform. To this end, it is applying the Scientific Outlook on Development, persevering in putting people first, changing its concept of development, making innovations in the mode of development, and improving the quality of development. It strives for high scientific and technological content, low resource consumption, minimum of environmental pollution, good economic returns, and guaranteed safety in energy development, so as to realize the coordinated and sustained development of all energy resources to the fullest possible extent.

*China's energy development is based on the principle of relying on domestic resources and the basic state policy of opening to the outside world. The country is striving to ensure a stable supply of energy with a steady increase in domestic energy production and promote the common development of energy around the world. China's energy development will bring more opportunities for other countries and expand the global market, and make positive contributions to the world's energy security and stability.*

*The basic themes of China's energy strategy are giving priority to thrift, relying on domestic resources, encouraging diverse patterns of development, relying on science and technology, protecting the environment, and increasing international co-operation for mutual benefit. It strives to build a stable, economical, clean and safe energy supply system, so as to support the sustained economic and social development with sustained energy development.*

- **Giving priority to thrift.** China has made resource-conservation a basic state policy, and stresses both developing and saving, with priority given to saving. For this, it is actively changing the pattern of economic growth, adjusting the industrial structure, encouraging research and development of energy-saving technologies, popularizing energy-saving products, improving energy management expertise, improving energy-saving legislation and standards, and enhancing energy efficiency.
- **Relying on domestic resources.** China mainly relies on itself to increase the supply of energy, and tries to satisfy the rising market demand by way of steadily expanding the domestic supply of reliable energy resources.
- **Encouraging diverse patterns of development.** China will continue to develop its coal resources in an orderly way, spur the power industry, speed up oil and natural gas exploration, encourage coal bed gas tapping, boost hydroelectric power and other renewable energy resources, actively promote nuclear power development, develop substitute energy resources in a scientific way, optimize its energy structure, realize supplementation between multiple energy resources, and guarantee a steady supply of energy.
- **Relying on science and technology.** China fully relies on science and technology to enhance its ability for independent innovation and its ability to digest and improve imported technologies, tackle technological bottlenecks in energy development, improve key technologies and the manufacturing level of key equipment, seek new ways for energy development and utilization, and redouble the strength for further development.
- **Protecting the environment.** China has set the goal of building a resource-conserving, environment-friendly society, and is endeavouring to coordinate energy development with environmental protection. It endeavors to make the two promote each other for sustainable development.
- **Co-operation for mutual benefit.** *China works sincerely and pragmatically with international energy organizations and other countries on the principle of equality, mutual benefit and win-win to improve the mechanism, expand the fields of co-operation and safeguard international energy security and stability.*

The 17<sup>th</sup> National Congress of the Communist Party of China, held in October 2007, set the goals of quickening the transformation of the development pattern and quadrupling the per-capita GDP of the year 2000 by 2020 through optimizing the economic structure and improving economic returns while reducing the consumption of energy resources and protecting the environment. The Outline of the 11th Five-Year Plan for National Economic and Social Development of the People's Republic of China projects that the per-unit GDP energy consumption by 2010 will have decreased by 20 per cent compared to 2005, and the total amount of major pollutants discharged will have been reduced by 10 per cent.

To realize the country's economic and social development goals, the energy industry has set the following targets in the 11<sup>th</sup> Five-Year Plan (2006–2010): By 2010, the energy supply will basically meet the demands of national economic and social development; and obvious progress will have been made in energy conservation; energy efficiency will have been noticeably enhanced and the energy structure optimized; technological progress, economic benefits and market competitiveness will have been greatly increased; and energy-related macro-control, market regulation, legislation and emergency pre-warning system and mechanism compatible with the socialist market economy will all have been improved. The result will be that the coordinated development will have been achieved between energy production, the economy, the society and the environment.

### III. All-round Promotion of Energy Conservation

China is a developing country with a large population but deficient resources. To attain sustainable economic and social development, it must take the path of conserving resources. China started energy conservation work in a planned and organized way in the early 1980s, and achieved the goal of quadrupling economic growth while doubling energy consumption by the late 1990s by implementing the policy of "stressing both development and

saving, with priority given to saving." To further promote energy conservation, the Chinese government made conservation of resources a basic state policy, and issued the Decision of the State Council on Strengthening Energy-Conservation Work. The Chinese government has always regarded energy conservation as a major factor in macro control and as a breakthrough and driving force for transforming the pattern of economic development and optimizing economic structure. While advancing the work of saving energy and reducing emissions, the Chinese government depends on structural adjustment as the fundamental approach, on scientific and technological advances as the key, on improved administration as a crucial measure, on the strengthening of law enforcement as an important guarantee, on the deepening of the reform as an internal motive force, and on public participation as the social foundation. It promulgated and implemented the Medium- and Long-term Special Plan for Energy Conservation, setting the goal for energy consumption reduction during the 11th Five-Year Plan period (2006–2010) and sharing out the tasks and responsibilities to the various provinces, autonomous regions and municipalities directly under the central government, as well as key enterprises. China is perfecting the index system of energy consumption per-unit GDP. It will incorporate energy consumption into the overall evaluation of economic and social development and the annual performance evaluation of regional governments. It will adopt an announcement system for this index, implement a target responsibility and accountability system for energy conservation and build an energy-conserving industrial system to effect the fundamental transformation of the country's pattern of economic development.

Energy conservation is a realistic choice for China to alleviate the pressure of energy shortage. It is a long and arduous strategic task to keep promoting energy conservation in the course of the country's economic and social development. China will advance energy conservation in all aspects, with the government playing the leading role, the market forming the basis and enterprises playing a major role, with [the] participation of the whole society. China will establish an energy- and resource-saving industrial structure, development pattern and consumption mode by taking improvement of energy efficiency as the core, and transforming the mode of economic development, adjusting the economic structure and accelerating technological advance as the foundation. China will establish an energy-saving industrial system and practice a target-responsibility and performance-evaluation system in this regard. It will improve the mechanism for spreading energy-saving technologies, and encourage R&D of such technologies and products. It will deepen the reform of the energy system, improve the energy pricing mechanism and give full play to economic policies, including fiscal and taxation ones, in promoting energy conservation.

To promote all-round energy conservation, China will take the following measures:

- **Pushing forward structural adjustment.** The major reasons for low efficiency of energy utilization for a long time have been the extensive mode of economic growth and a high proportion of high energy-consuming industries in China. The country will put the transformation of the development pattern and the adjustment of the industrial structure and of the internal structures of industries in the key place for the energy-conservation strategy, and work hard to bring into being a pattern of economic development with "low input, low consumption, less emission and high efficiency." China will accelerate the optimization and upgrading of its industrial structure, make energetic efforts to develop high- and new-tech industries and the service trades, set strict limits on the development of high energy-, material- and water-consuming industries, and eliminate industries with backward productivity, so as to fundamentally change the pattern of economic development and put in place an energy-saving industrial system on an early date.
- **Improving energy conservation in industry.** Industry is a major sector of energy consumption in China. The country is determined to take a new road to industrialization characterized by high scientific and technological content, good economic returns, low resource consumption, minimum of environmental pollution, and full use of human resources. To achieve this, China will accelerate the development of high-tech industries and transform traditional industries with high- and new-technologies, as well as advanced and applicable ones, and in turn upgrade the overall industrial standard. Industries with high

energy consumption, such as steel, nonferrous metals, coal, electricity, petroleum and petrochemicals, chemical engineering and building materials, will be the target sectors for saving energy and reducing energy consumption. The Chinese government has launched an energy-conservation drive among 1,000 enterprises, with the focus on tightening control over those consuming 10,000 tons of standard coal or more each year. It will readjust the product mix, speed up technological reform, improve management and economize on energy. It will support a group of key and demonstration projects aiming to conserve energy and cut consumption so as to rally industries to enhance their energy-saving level. It will continue to raise the standards for energy efficiency of industry, eliminate backward and high energy-consuming products, and perfect the market access system.

- **Launching energy-saving projects.** China is carrying out ten key energy-saving projects, including petroleum substitution, simultaneous generation of heat and power, surplus heat utilization and the construction of energy-saving buildings. The Chinese government supports key and demonstration energy-saving projects, and encourages extensive application of high-efficiency, energy-saving products. China will make vigorous efforts to construct energy- and land-saving buildings, actively promote the energy-saving renovation of existing buildings, and extensively use new walling materials. China will continue to implement petroleum substitution and develop substitute fuels in a scientific way. It will speed up the elimination of old automobiles and ships, actively develop public transport; set limits on high oil-consuming automobiles, and develop energy-saving and environment-friendly automobiles. It will accelerate the innovation of coal-fueled industrial boilers (kilns), regional simultaneous generation of heat and power and surplus heat and pressure utilization, and improve the efficiency of energy utilization. It will save more energy in the sphere of electrical machinery and optimize energy systems, so as to improve the efficiency of both. It will carry out the Green Lighting Project, and spread ... high-performance electrical appliances [more rapidly]. It will also spread technologies for firewood- and coal-saving stoves and energy-saving houses in rural areas, and eliminate old, high energy-consuming farm machinery and fishing boats, so as to promote energy conservation in agriculture and the rural areas. It will urge government bodies to save more energy, giving full play to the role of the government in leading energy conservation. It will put in place at an early date the system of energy-conservation monitoring and technological support, strengthening energy-conservation monitoring and establishing new energy services platforms.
- **Strengthening the administration of energy conservation.** The Chinese government has established a system of compulsory government procurement of energy-saving products, actively advocating energy-saving (including water-saving) products as a priority for government procurement; and included some products with outstanding results and stable performance on the list of compulsory procurement. It will give full play to the role of governmental purchase in policy guidance and in encouraging all sectors of society to produce and use energy-saving products. It will study and formulate fiscal and taxation policies to encourage energy conservation, implement preferential taxation policies for those effectively making comprehensive use of resources, and set up an energy-saving mechanism with multi-channel financing. It will deepen the reform of energy prices to introduce a pricing mechanism favorable for energy conservation. It will put in force an evaluation and examination system in respect of energy conservation in fixed assets investment projects and strictly control increase of energy consumption at the roots. It will set up a new energy-conservation mechanism for enterprises, adopt an energy efficiency labeling mechanism, and promote contract-based energy management and voluntary energy-conservation agreements. It will improve the legal framework regarding energy conservation, and strengthen energy-conservation management by law. It will improve the overall quality of energy-conservation managerial personnel, and step up efforts in law enforcement, supervision and examination.

- **Advocating energy conservation in society.** The Chinese government energetically advocates the significance of energy conservation by various means, constantly strengthening the public awareness of the importance of resources conservation. It will promote the culture of energy conservation, and work hard to bring into being a healthy, civilized and economical mode of consumption. It will incorporate energy conservation into the system of elementary education, vocational education, higher education and technical training, and publicize and popularize relevant knowledge by means of mass media. It will enhance the energy-conservation week campaign, and mobilize all sectors of society to participate in it. All these measures will help to build a long-term mechanism of energy conservation with the participation of all sectors of society.

#### **IV. Improving Energy Supply Capacity**

For a long time China has relied largely on domestic energy resources to develop its economy, and the rate of self-sufficiency has been above 90 percent, much higher than that in most developed countries. China is now the second-biggest energy producer in the world, and has a relatively strong foundation for energy production and supply. In the course of building a moderately prosperous society, China will rely mainly on domestic energy resources, give priority to optimizing its energy mix, and work hard to increase its energy supply capacity.

China boasts great potential in energy resources exploitation. Coal resources already verified only account for 13 per cent of the total deposits, and recoverable reserves account for 40 per cent of the discovered resources. Only 20 per cent of the country's hydropower resources have been utilized so far. Verified oil reserves are 33 per cent of the total deposits, and China has begun to enter the middle phase of oil prospecting, still seeing a big potential. Proven reserves of natural gas account for 14 per cent, showing that China is in the early stage of exploration and indicating bright prospects in this sphere. Regarding non-conventional energy, China is still at the early stage of exploitation and utilization, with a great potential for development. As for renewable energy, China has only just started in its exploitation and utilization, so there is immense room for development in this regard. Good prospects are also seen for conserving, making comprehensive use of and recycling resources.

To increase its energy supply capacity, China will take the following measures:

- **Developing the coal industry in an orderly way.** Coal is a basic energy in China, and [there] is an urgent need to increase the supply capacity, optimize the energy mix, ensure coal mining safety, reduce environmental pollution, increase resource utilization efficiency and build a new coal industry system, so as to guarantee the development of the national economy. China will step up its efforts in prospecting coal resources, render support to large coal mining bases in conducting resource surveys and detailed geological surveys, set standards for commercial prospecting, improve the level of guarantee for coal resources, and steadily push forward the building of large coal mining bases. By merger and reorganization of enterprises, the country will bring into being some large coal mining conglomerates each with a total annual production capability of 100 million tons. It will continue to push forward the development and integration of coal resources by renovating medium- and small-sized coal mines and closing down, in accordance with the law, small ones not conforming to industrial policies, with poor safety conditions, wasting resources and harming the environment, so as to further optimize the structure of the coal industry. It will promote the coordinated development of related industries, and encourage coal-electricity joint operation or coal-electricity-transport integrated management, so as to extend the coal industry chain. It will further mechanize coalmines and enhance overall mechanization in coal mining, promote the clean production and utilization of coal, encourage R&D and spreading of clean coal technologies, and quicken the research into and demonstration of substitute liquid fuels. China will actively develop a circular economy, step up efforts in environmental protection, promote the comprehensive utilization of resources, and accelerate the industrialized development of coal-bed gas. It will strengthen the building of

the coal transport system and steadily increase the coal transport capacity. It will establish a responsibility system for safe production, beef up safety installations and put more money into gas prevention and control, so as to improve the level of safe production.

- **Actively developing electric power.** Electric power is a highly efficient and clean energy. It is also a basic requirement for the steady development of the national economy and society to establish an economical, highly efficient and stable power supply system. China will optimize the power supply structure based on structural adjustment. On the basis of taking into overall consideration such factors as resources, technology, environmental protection and the market, the Chinese government will develop clean coal-fired electric power by setting up large coal-fired power bases and encouraging the building of power plants at pitheads, with emphasis on large, highly efficient, environment-friendly power generating sets. It will actively develop cogeneration of heat and power, and speed up elimination of small and backward thermal power units. On the condition that the ecological environment is protected and problems affecting local people are properly settled, energetic efforts will be made to develop hydropower. It will also actively develop nuclear power, and appropriately develop natural gas power generation. It will encourage power generation with renewable and new energy resources. It will strengthen the building of regional power grids and power transmission and distribution networks and expand the scope of power transmission from western to eastern China. Uniform planning and distribution of electric power will be adopted, and an emergency response system for power safety will be set up to enhance the safety and reliability of the power system. China will continue to strengthen power demand-side management (DSM), exert control over power use for the purpose of conserving energy and work hard to increase energy utilization efficiency.
- **Expediting development of oil and gas.** China will continue to implement the policy of “simultaneous development of oil and gas,” steadily increase crude oil output and make efforts to increase the output of natural gas. The country will step up its efforts in prospecting for and exploiting oil and natural gas, with the focus on major oil and gas basins, including those of Bohai Bay, Songliao, Tarim and Ordos, and actively explore new areas, fields and strata on the land and major sea areas, so as to increase the amount of recoverable reserves. It will tap the potential of major oil-producing areas, improve renovation for stable yields, increase the recovery ratio and slow down the yield decreasing trend in old oilfields. On the condition of reasonable cost, it will actively develop coal-bed gas, oil shale and tar sand and other non-conventional energy resources. The country will expedite the construction of oil and gas pipeline networks and supporting facilities and gradually improve the national network of oil and gas pipelines.
- **Vigorously developing renewable energy.** China gives top priority to developing renewable energy. The exploration and utilization of renewable energy resources plays a significant role in increasing energy supply, improving the energy mix and helping environmental protection, and is also a strategic choice of China to solve the contradiction between energy supply and demand and achieve sustainable development. China has promulgated the *Renewable Energy Law* and priority policies for renewable energy electricity, entailing priority to be connected to grids, acquisition in full and preferential price, and public sharing of costs. It has earmarked special funds for renewable energy development to support resource survey, R&D of relevant technologies, building of pilot and demonstration projects, as well as exploration and utilization of renewable energy in rural China. It has released the Medium- and Long-term Program for Renewable Energy Development, putting forward the goal of increasing renewable energy consumption to 10 per cent of the total energy consumption by 2010 and 15 per cent by 2020. China will further the comprehensive and cascade development of areas with hydropower resources, speed up the construction of large hydropower stations, develop medium- and small-sized hydropower stations based on local conditions, and construct pumped-storage power stations under appropriate circumstances. It will spread the latest technologies for the utilization of solar energy, methane and other renewable energy sources, and increase

their market shares. It will also actively popularize technologies utilizing wind, biomass and solar energy for power generation, and build several million-kw wind power bases to achieve industrialization by means of scale power generation. It will actively implement policies supporting renewable energy development, foster a renewable energy market featuring sustained and stable development, and gradually establish and improve an industrial system and a market and service system of renewable energy, so as to promote renewable energy technological advance and industrial development.

- **Improving energy development in rural areas.** China has a rural population of 750 million. Due to economic and technical limitations, people in most rural areas still use traditional biomass energy. It is an inevitable demand in the building of a new socialist countryside in all aspects to solve the energy problem for the rural areas. This is also a problem unique to China. The Chinese government sticks to the principle of “development based on local conditions, supplementation between multiple energy resources, comprehensive utilization with focus on actual results,” and works hard to improve energy development in the rural areas. The Chinese government has improved the energy conditions for rural people’s life and production, and solved the power problem for over 30 million rural people who had no access to electricity and in remote areas not connected to the grid, by carrying out the Lighting Project, “rural grid renovation,” “electrification of hydropower-based rural areas” and “connecting villages with the grid” campaigns, and making full use of small-sized hydropower stations, wind energy and solar energy for power generation. Basically, rural and urban residents are connected to the same grid and pay the same rate. China will further actively develop rural household methane and make better use of biomass and solar energy, so as to provide clean energy for the rural people. It will continue popularizing firewood- and energy-saving stoves and small energy facilities, such as small wind power and hydropower stations, in rural areas. It will increase the supply of high-quality fossil energy and increase the proportion of commercial energy consumption in rural areas. Continuous efforts will be made to strengthen the construction of the rural grids to expand their coverage. Moreover, China will actively build green-energy counties for demonstration, and accelerate the exploration and utilization of renewable energy resources in rural areas.

## **V. Accelerating the Progress of Energy Technologies**

Science and technology is the primary productive force and the main motive force of energy development. China sets great store by the development of energy science and technology, and has narrowed its technological gap with the developed countries in the energy industry and effectively promoted the overall development of the energy industry. The Chinese government promulgated the Outline of the National Plan for Medium- and Long-term Scientific and Technological Development (2006-2010) in 2005, which gives top priority to the development of energy technologies, and, in line with the principle of making independent innovations and leapfrogging development in key fields, shoring up the economy and keeping in step with leading trends, stresses accelerating progress of energy technologies and strives to provide technological support for the sustainable energy development.

Following the laws and traits of scientific and technological development, China actively develops and popularizes advanced and applicable technologies in the fields of energy saving, substitution, recycling and pollution control, and is creating a favorable policy environment for the progress of energy technologies. The Chinese government strives to gradually establish a market-oriented system for technological innovation, in which enterprises play the leading role and which combines the efforts of enterprises, universities and research institutes. It vigorously promotes R&D and the application of advanced energy technologies, guides enterprises to expedite technological progress and enhance energy utilization efficiency through the market mechanism. It strengthens the training of talented people in energy science and technology, and improves policies, laws and regulations, and technical standards in this respect to create favorable conditions for the development of energy technologies.



- **Popularizing energy-saving technologies.** China gives priority to the development of energy-saving technologies, with focus on key technologies in the high energy-consumption sectors, to enhance the utilization efficiency of primary and end-use energy resources; implements the policy outline on energy-saving technologies and guides social investment into the application of energy-saving technologies; places emphasis on R&D of energy-saving technologies and equipment for industry, transport and construction, and the application of technologies connected with integrated renewable energy systems and energy-saving construction materials; strengthens energy measurement, control, supervision and management; and actively fosters an energy-saving technological service system.
- **Spurring innovation in key technologies.** China encourages the development of clean coal technology, reinforces R&D of advanced technologies, such as coal gasification, processing and conversion, popularizes advanced power generation technologies, including integrated gasification combined cycle (IGCC), supercritical and ultra-supercritical power generation, and large-scale circulating fluidized bed (CFB), and develops coal gasification-based poly-generation technology. China attaches particular importance to mastering the third-generation pressurized-water reactor (PWR) nuclear power generation and high temperature gas-cooled reactors (HTGR) for industrial experimental technologies. It actively develops technologies in connection with prospecting for and exploitation of petroleum and gas resources under complicated geographical conditions, and highly efficient exploitation of low-grade petroleum and gas resources; encourages the development of technology for substitutes of energy resources, gives priority to the development of technologies for large-scale utilization of renewable energy; and steadily improves the technology of power transmission at voltages of 800 kv DC and 1,000 kv AC and power grid safety technology.
- **Enhancing equipment manufacturing level.** The equipment manufacturing industry is the foundation of the development of energy technologies. China gives impetus to the technological progress of the equipment manufacturing industry through key state projects. The Chinese government encourages the development of comprehensive excavation machinery in coal mining, large comprehensive mining, hoisting, transport and washing equipment for underground coal mining, and heavy-duty open-pit mining machinery. It supports the development of complete sets of large equipment for coal chemicals as well as R&D of coal liquefaction and gasification, and coal-to-olefin conversion equipment, the development of high-efficiency and low-pollution power generation equipment, high-efficiency coal-fired power generation units, hydropower and pumped-storage units, heavy-duty gas turbines, PWR nuclear power generation units with a capacity of one million kw, high-power wind-driven generators, and super-high-power transmission and transformation machinery. It encourages the development of oil and natural gas prospecting and drilling equipment and support equipment for large offshore oil projects, crude oil carriers with a capacity of 300,000 dwt, liquefied natural gas carriers and high-power diesel engines.
- **Strengthening frontier technology research.** Frontier technology, as a new potential driving force for energy development, can blaze the way for the leapfrogging development of energy industry and technologies. China focuses on research into conversion from fossil, biomass and renewable energy resources to hydrogen, and high-efficiency hydrogen storage, transmission and distribution technology. It also conducts research into the technology for the manufacturing of basic and key components of fuel cells, integration of fuel cell stacks, fuel cell power generation and automotive fuel cell power systems, and strives to make breakthroughs in the technology for the end-use energy conversion, storage and combined cooling, heating and power projection of fossil energy-based micro-miniature gas turbine systems. Meanwhile, the country is speeding up research into the engineering and core technology of gas-cooled faster reactors (GFR), and technology for developing magnetic confinement fusion (MCF) and natural gas hydrate technology.

- **Developing basic scientific research.** Basic research is the source of independent innovation and it determines the strength and potential of energy development. China concentrates on research into the basic theories of the high-efficiency and low-pollution utilization and conversion of fossil energy, key principles of high-efficiency heat-work conversion, high-efficiency energy saving and storage, basic technology for large-scale utilization of renewable energy, and basic theories concerning technology for large-scale utilization of nuclear and hydrogen energy resources.

## VI. Coordinating Energy and Environment Development

Climate change is a significant global issue of worldwide concern. It is both an environmental and development issue, and intrinsically a development issue. The large-scale exploitation and utilization of energy resources is one of the major causes of environmental pollution and climate change. Appropriate handling of the relationship between the exploitation and utilization of energy resources on the one hand, and environmental protection and climate change on the other, is an urgent issue facing all countries. China is a developing country in the primary stage of industrialization, and with low accumulative emissions. From 1950 to 2002, the aggregate amount of China's fossil fuel carbon dioxide emissions accounted for only 9.3 per cent of the world's total in the same period. The amount of China's per-capita carbon dioxide emissions ranked 92<sup>nd</sup> in the world, and the elasticity coefficient of carbon dioxide emissions per-unit GDP was very small.

As a responsible developing country, China attaches great importance to environmental protection and prevention of global climate change. The Chinese government has made environmental protection a fundamental state policy, signed the United Nations Framework Convention on Climate Change, established the National Coordination Committee for Climate Change, submitted to the UN the Initial National Communication on Climate Change of the People's Republic of China, worked out the *Management Measures on the Implementation of Clean Development Mechanism Projects*, formulated the National Climate Change Program, and adopted a series of proactive policies and measures regarding environmental protection and climate change. China aims to achieve the goal of basically curbing the trend of ecological deterioration, reducing total emissions of major pollutants by 10 percent, and gain visible results in the control of greenhouse gas emissions during its 11th Five-Year Plan period (2006-2010). Meanwhile, the country is actively adjusting its economic and energy structures, comprehensively advancing energy saving, emphatically preventing and controlling the pressing problems of environmental pollution, and effectively controlling emissions of pollutants to facilitate coordinated development between energy and the environment.

- **Comprehensive control of greenhouse gas emissions.** China is expediting the transformation of its economic development mode, giving full play to the role of energy saving and optimization of energy structure in slowing climate change, and endeavouring to cut fossil energy consumption. It is vigorously developing a circular economy, fostering the comprehensive utilization of resources, enhancing the utilization efficiency of energy, reducing greenhouse gas emissions. It continuously improves the capability of addressing climate change with the aid of scientific and technological progress, thereby making positive contributions to the environmental protection of the Earth.
- **Energetically fighting ecological destruction and environmental pollution.** China will pay more attention to the clean utilization of energy resources, especially coal, and make it a focus of environmental protection, energetically combating ecological destruction and environmental pollution. The country is quickening its pace of control of coal mining subsidence areas and the exploitation and utilization of coal-bed gas, and establishes and improves the compensation mechanism for the exploitation of coal resources and restoration of the eco-environment. It promotes the orderly exploitation of coal resources, restricts the exploitation of high-sulfur and high-ash coal, forbids mining coal with toxic and harmful substances, such as arsenic and radiotoxins, exceeding permissible limits. It actively develops clean coal technology and

encourages the application of coal washing, processing, conversion, clean-burning and smoke-purifying technologies. At the same time, it is expediting the construction of desulfurizing facilities in coal-fired power plants, requiring that newly built coal-fired power plants must install and use desulfurizing facilities according to the permissible emission standards, and such existing plants must speed up their desulfurization upgrading. The Chinese government strictly prohibits the construction of new coal-fired power plants for the sole purpose of power generation in medium and large cities or on their outskirts.

- **Proactive prevention of motor vehicle emission pollution.** The development of the automobile industry and the improvement of the people's livelihood have led to a rapid growth in the number of motor vehicles. Consequently, preventing motor vehicle emission pollution has been put high on the environmental protection agenda. China is actively taking effective measures to this end: strictly enforcing vehicle emission standards; intensifying inspection for the environment-friendly production of vehicles; strictly implementing the annual emission inspection system for motor vehicles; strictly forbidding manufacture, sale and import of motor vehicles exceeding the emission limits. At the same time, China encourages the production and use of vehicles burning clean fuels, and the production of hybrid electric vehicles, and supports the development of rail transport and electric buses.
- **Exercising strict environmental management of energy projects.** Strengthening the environmental management of energy projects is an effective measure to ensure coordinated development between energy construction and environmental protection. China strictly enforces the environmental impact assessment system, restrains extensive mode of economic growth by exercising a strict environment access system. It ensures simultaneous design, construction and launching of environmental protection facilities at new, expansion and rebuilding projects, intensifies safe management of nuclear power projects, reinforces supervision and management of the safety and radiation environment of nuclear power plants, research reactors and fuel cycle facilities in operation, and practices meticulous safety examination and supervision of nuclear power facilities under construction. It further enhances environmental protection efforts in the construction of hydropower projects, pays equal attention to the requirements of comprehensive development and utilization of river basins while protecting the environment, and increasing the level of comprehensive utilization of water resources and eco-environmental benefits.

## VII. Deepening Energy System Reform

Improving the environment for development is an intrinsic requirement of China's energy development. In accordance with the requirements of perfecting the socialist market economy, China is steadily advancing its energy system reform to promote the development of the energy industry. In 1998, strategic reorganization was accomplished among petroleum enterprises, featuring the establishment of new vertically integrated management system of oil industry. In 2002, China's power industry realized the separation of government functions from those of enterprises, as well as the separation of power plants from grid operation in line with the power system reform plan. In 2005, after the market-oriented reform of the coal industry, China's coal industry saw deepened reform and further development pursuant to the Opinions on Promoting the Healthy Development of the Coal Industry issued by the State Council. China is further deepening reform of the energy system, elevating the energy marketization level, improving the energy macro-control system, and improving the environment for energy development in accordance with the requirements of innovation in concept, management, system and mechanism.

- **Strengthening energy legislation.** It is an imperative requirement for energy development in China to improve the energy-related legal system to provide a legal guarantee for increasing the energy supply, standardizing the energy market, optimizing the energy structure and maintaining energy security. China sets great store by and actively advances the construction of the energy legal system. China has enacted and put in force the *Clean Production Promotion Law and Renewable Energy Law*, and has issued a series of

supporting policies and measures. The amended Energy Conservation Law has been promulgated. The *Energy Law*, *Circular Economy Law*, *Law on the Protection of Oil and Natural Gas Pipelines and Regulations on Energy Conservation of Buildings* are being formulated. The *Mineral Resources Law*, *Coal Industry Law*, and *Electric Power Law* are being revised. Meanwhile, active efforts have been made in research into energy legislation concerning oil and natural gas, the crude oil market and atomic energy.

- **Reinforcing production safety.** In the course of energy development, China pays high attention to safeguarding the lives and health of the people, and takes effective measures to halt the trend of frequent occurrences of serious accidents. It adheres to the principle of giving top priority to safety, placing the main emphasis on prevention, and exercising comprehensive control. It has intensified efforts in the control and comprehensive utilization of coal gas, and rectified and shut down small coalmines lacking conditions for safe production. It has enforced safety supervision of coalmines, and guided local governments and enterprises to intensify efforts in technological upgrading for coalmine safety and the construction of safety facilities. It comprehensively carries out education on safe production to enhance the sense of responsibility for safety, continues to consolidate electric power safety and petroleum and gas production safety, intensifies supervision and management measures, and practices a working system in which production safety is supervised by the state and administered by local governments while enterprises take the responsibility. It further implements the safe production responsibility system, and enforces rigorous safe production laws and regulations and a related accountability system.
- **Improving the emergency response system.** As an important aspect of economic security, energy security has a direct bearing on national security and social stability. China practices unified power dispatch, hierarchical power management and operation of power grids by regions. A safety responsibility system with division of work among government departments, supervision organs and power enterprises has been established, in which the power grids and power generation enterprises work out emergency response plans to cope with large-scale emergencies. Following the principle of unified planning and step-by-step implementation, China has built national oil reserve bases and expanded its oil reserve capacity. It has gradually established a guarantee system for oil and natural gas supply emergencies to ensure secure supplies of energy.
- **Accelerating market system construction.** China sticks to the policy of reform and opening-up, gives full play to the basic role of the market in allocating resources, encourages the entrance of entities of various ownerships into the energy field, and actively facilitates market-oriented reform related to energy. It has improved the coal market system in an all-round manner, established an open, orderly and healthy power market system characterized by separating government functions from those of enterprises and fair competition, paced up reform of the oil and natural gas circulation system, and promoted the healthy and orderly development of the energy market.
- **Deepening reform of [the energy] management system.** China has stepped up efforts in the reform of its energy management system, improved the national energy management system and decision-making mechanism, strengthened unified planning and coordination among state departments and local governments, and consolidated the state's overall planning and macro-control in the field of energy development, with the focus on changing functions, straightening out relations, optimizing the setup and raising efficiency, so as to form a management system that centralizes control to an appropriate degree, divides work in a rational way, fosters scientific decision making, and ensures smooth enforcement and effective oversight. The Chinese government has furthered the transformation of government functions, giving priority to guidance by policy measures and attaching importance to information services. It has deepened the reform of the energy investment system, and established and improved the investment regulation and control system. It has further strengthened standardized management of energy resources, improved the management system of mineral resources development and exploitation, put in place and improved the system for paid use of mineral resources and the system of trade in mining rights, and rectified and regulated the order of mineral resources exploitation market.

- **Advancing price mechanism reform.** The price mechanism is the core of the market mechanism. On the premise of properly handling the relations among various interest groups and taking full account of the acceptability of all social sectors, the Chinese government has advanced energy price reform in a vigorous yet steady way, gradually established a pricing mechanism that is able to reflect resource scarcities, changes in market supply and demand, and environmental costs. It has deepened coal price reform to realize all-round marketization. It has propelled electricity tariff reform to ensure that electricity generation and selling prices are eventually formed by market competition, with the electricity transmission and distribution prices being supervised and controlled by the state. It has improved step by step the oil and natural gas pricing mechanism to [expediently] reflect changes in international market prices and domestic market supply and demand.

### VIII. Strengthening International Cooperation in the Field of Energy

China's development cannot be achieved without cooperation with the rest of the world, and the prosperity of the world needs China as well. With accelerating economic globalization, China has forged increasingly closer ties with the outside world in the field of energy. China's development of energy has not only satisfied its own needs for economic and social progress, but also brought opportunities and tremendous space for development to the rest of the world.

China is an active participant in international energy cooperation. In multilateral cooperation, China is a member of the energy working group of the Asia-Pacific Economic Cooperation (APEC), Association of Southeast Asian Nations (ASEAN) plus China, Japan and ROK (10+3) Energy Cooperation, International Energy Forum, World Energy Conference, and Asia-Pacific Partnership for Clean Development and Climate. It is an observer of the Energy Charter, and maintains close relations with such international organizations as the World Energy Agency and the Organization of Petroleum Exporting Countries (OPEC). Regarding bilateral cooperation, China has established a mechanism for dialogue and cooperation in the field of energy with a number of energy consuming and producing countries, such as the U.S., Japan and Russia, and the European Union. It has intensified dialogue and cooperation regarding energy exploration, utilization, technology and environmental protection, as well as renewable energy and new energy resources, and has had extensive dialogues and exchanges with them in such aspects as energy policy and information data. In international cooperation in the field of energy, China has not only shouldered a wide range of international obligations, but also played an active and constructive role.

China has made active efforts to improve laws and policies related to its opening up, promulgating in succession the *Law on Sino-foreign Equity Joint Ventures*, *Law on Sino-foreign Cooperative Joint Ventures* and *Law on Foreign Capital Enterprises* to create a fair and open environment for foreign investment. In 2002, China formulated the *Regulations for the Guidance of Foreign Investment Orientation*, and revised the *Catalogue of Industrial Guidance for Foreign Investment and the Catalogue of Advantageous Industries for Foreign Investment in the Central and Western Regions* in 2004, in order to encourage foreign investment in the energy sector, including energy and energy-related exploitation, production, supply, transportation and energy equipment production, as well as in the energy sector of the central and western regions.

- **Improving external cooperation in the exploration and development of oil and gas resources.** China has implemented a cooperative mode based on product[ion]-sharing contracts with other countries in the field of oil and gas resources. In 2001, China promulgated the revised *Rules on External Cooperation for Ocean Oil Exploitation as well as Rules on External Cooperation for Onshore Oil Exploitation*. China protects the legitimate rights and interests of foreign business people participating in collaborative oil exploitation. It encourages foreign business people to participate in cooperation in oil exploration and development, such as risk exploration for oil and natural gas, low-permeability oil and gas reservoirs (fields), and the improvement of the recovery rate of old oilfields. It encourages foreign investment in the construction and operation of oil and gas pipelines, as well as special oil and gas storages and port berths.

- **Encouraging foreign investment in exploration and development of unconventional energy resources.** In 2000, China promulgated the *Opinions on Further Encouraging Foreign Investment in Exploring and Exploiting Non-oil-and-gas Mineral Resources*, further opening up its market in this regard. China allows foreign investors, either by themselves or in collaboration with Chinese counterparts, to conduct risk exploration on its territory. Foreign investors who invest in exploring and recovering paragenetic and associated minerals and utilizing tailing or exploring mineral resources in China's western regions are entitled to enjoy the preferential policy of reduction of or exemption from mineral resources compensation fees. Further efforts are being made to improve management of and services to foreign investment in the exploration and exploitation of non-oil-and-gas mineral resources.
- **Encouraging foreign investors to invest in and operate energy facilities such as power plants.** China encourages foreign investment in the production and supply of electric power and gas, as well as in the construction and operation of thermal power plants with a single-generator capacity of 600,000-kw and above, power stations burning clean coal, power stations featuring heat and power cogeneration, hydropower stations mainly for electricity production, nuclear power stations in which the Chinese side holds the dominant share, as well as power stations with renewable energy or new energy resources. It encourages foreign investors to invest in technology and equipment production for thermal, hydro and nuclear power stations with a considerably large generating capacity as well as for thermal power desulphurization. It also encourages them to invest in the construction and operation of coal pipeline transportation facilities.
- **Further improving the environment for foreign investment.** The Chinese government has kept its commitments to the WTO made when it joined the organization and has sorted out and rectified administrative regulations and departmental rules concerning energy management that are inconsistent with the WTO rules. In light of the demand of transparency [from] the WTO, China has relaxed control over the scope of geological data of a public welfare nature, strengthened the work of releasing energy policies, improved the energy data and statistics system and promptly released energy statistics, so as to ensure the openness and transparency of energy policies, statistics and information.
- **Further expanding the scope of foreign investment.** In bringing in foreign investment for the development and utilization of energy resources, China pays primary attention to introducing foreign advanced technology, management experience and people of high caliber to further shift[] the focus from investing in fossil energy resources to renewable resources, from emphasizing exploration and development to the development of service trade, and from relying mainly on foreign loans and direct foreign investment to direct pooling of funds [in the] international capital market.

For a fairly long time to come, [the] international energy trade will remain a major way by which China utilizes foreign energy resources. China will actively expand international energy trade, promote the complementary advantages of the international energy market and maintain the stability of this market. China will pursue energy imports and exports, and improve policies for fair trade in accordance with its commitments to the WTO and the WTO rules. It will, step by step, change the current situation of relying too heavily on spot trading of crude oil, encourage the signing of long-term supply contracts with foreign companies, and promote the diversification of trading channels. China supports direct overseas investment by domestic qualified enterprises to engage in transnational operation, and encourage such enterprises to participate in international energy cooperation and in the construction of overseas energy infrastructure, and steadily expand cooperation in energy engineering technology and services in accordance with international practice and the rules of the market economy.

Energy security is a global issue. Every country has the right to rationally utilize energy resources for its own development, and the overwhelming majority of countries could not enjoy energy security without international cooperation. To realize a steady and orderly development of the world economy, it is necessary to promote economic globalization to develop in a direction featuring balance, universal benefit and win-win, and it is necessary for the international community to foster a new concept of energy security characterized by mutual benefit and cooperation, diversified development and coordinated guarantee. In recent years, sharp fluctuations of oil prices on the international market have affected the development of the world economy. The causes are multiple and complex, which demands that the international community strengthen dialogue and cooperation to work out a solution together from various aspects. To safeguard world energy security, China holds that the international community should make efforts mainly in the following three aspects:

- **Intensifying mutually beneficial cooperation in energy exploration and utilization.** *To ensure world energy security, it is imperative to strengthen dialogue and cooperation between energy exporting countries and energy consuming countries, as well as between energy consuming countries. The international community should strengthen consultation and coordination as regards energy policies, improve the international energy market monitoring and emergency response mechanisms, promote oil and natural gas development to increase energy supply, realize globalization and diversification of energy supply, ensure stable and sustainable energy supply internationally, maintain reasonable energy prices on the international market, and ensure that each country's energy demands are well met.*
- **Setting up a system to develop and popularize advanced technology.** *Energy conservation and diversification is a long-range plan for global energy security. The international community should strive to develop and popularize energy conservation technology, promote the comprehensive utilization of energy, and encourage each country to improve energy efficiency. It is necessary to actively advocate cooperation in highly efficient utilization of fossil fuels, such as clean coal technology, encourage cooperation of the international community in major energy technologies, such as renewable energy, hydrogen energy and nuclear energy, and explore for the establishment of a future world energy supply system using resources that are clean, economical, safe and reliable. Aiming at the sustainable development of humanity, the international community should handle well the problems concerning capital input, intellectual property rights protection and popularization of advanced technology, so as to benefit all countries and allow them to share humanity's achievements.*
- **Maintaining a safe, stable and wholesome political environment.** *Safeguarding world peace and regional stability is the prerequisite for global energy security. The international community should work collaboratively to maintain stability in oil producing and exporting countries, especially those in the Middle East, to ensure the security of international energy transport routes and avoid geopolitical conflicts that affect the world's energy supply. The various countries should settle disputes and resolve contradictions through dialogue and consultation. Energy issues should not be politicized, and triggering antagonism as well as the use of force should be avoided.*

## Conclusion

In the course of building a moderately prosperous society in all respects that benefits [the] 1.3 billion people of China, energy has a significant bearing on China's economic and social development. It is a long and arduous task to use sustainable energy development to support the sustainable economic and social advancement. The Chinese government will strive to address the energy problem properly to realize sustainable energy development.

Though China's energy consumption is growing rapidly, its per-capita energy consumption level is still fairly low—only about three-fourths of the world's average. The figures for China's per-capita oil consumption and imports account for only one-half and one-quarter of the world's average, respectively, far below the level of the developed countries. China did not, does not and will not pose any threat to the world's energy security. China will continue to maintain its sustainable energy development and make it promote the sustainable development of the world's energy resources, thus making positive contributions to the world's energy security.

Peace and development remain the themes of our era. Pursuing peace, seeking development and promoting cooperation have become an irresistible trend of the times. With the continuous economic globalization, rapid advances in science and technology, quickened flow of the factors of production as well as the accelerated changes of industries, all countries and regions in the world have intensified their interactions. The world needs to strengthen cooperation to safeguard global energy security. China will, together with all other countries, make unremitting efforts to safeguard the stability and security of energy supplies in the world, strive to achieve mutual benefit, win-win and common development, and protect this home human beings share.

#### **48. China's Energy Policy 2012 (State Council, October 2012)**

Source: The State Council website, retrieved from: <http://www.scio.gov.cn/zxbd/wz/201210/t1233774.htm>

*Note by editors: What follows is an excerpt relating to international policy in energy.*

### **IX. Strengthening International Cooperation in Energy**

China's development cannot be achieved without cooperation with the rest of the world, and the prosperity of the world has need of China as well. With accelerating economic globalization, China has forged increasingly closer ties with the rest of the world in the field of energy. China's development of energy has not only satisfied its own needs for economic and social progress, but also made great contributions to world energy security and global market stability.

China is an active and responsible participant in international energy cooperation, and it has established bilateral dialogue and cooperative mechanisms in the field of energy with the U.S., the EU, Japan, Russia, Kazakhstan, Turkmenistan, Uzbekistan, Brazil, Argentina, Venezuela and many other countries and regions, and has strengthened dialogues, exchanges and cooperation with these countries regarding oil, natural gas, coal, electric power, renewable energy, technology, equipment and energy policy. China is also a member of or important participant in many multilateral organizations and mechanisms, including the energy working group of the Asia-Pacific Economic Cooperation Organization, Group of 20, Shanghai Cooperation Organization, World Energy Council and International Energy Forum. It is an observer of the Energy Charter, and maintains close relations with such international organizations as the World Energy Agency and the Organization of Petroleum Exporting Countries. In international energy cooperation, China assumes a wide range of obligations and plays an active and constructive role.

China upholds a policy of opening to the rest of the world in the field of energy. To provide a favorable environment for foreign investment and protect the legitimate rights and interests of investors, it has promulgated a series of laws and regulations in succession, like the Law on Sino-foreign Equity Joint Ventures, Law on Sino-foreign Cooperative Joint Ventures and Law on Foreign Investment Enterprises, and framed such policy documents as the Catalogue of Industries for Guiding Foreign Investment and the Catalogue of Advantageous Industries for Foreign Investment in the Central and Western Regions. The Chinese government encourages foreign investment to engage in the exploration and development of oil, natural gas and unconventional oil and gas resources, such as shale gas and coal-bed gas, by way of cooperation; invites foreign investment in the building of new-energy power stations, hydroelectric power stations, clean-combustion power stations, and nuclear power stations as long as the Chinese partners have control; and supports multinational energy corporations to set up R&D centers in China.

Following the principle of equality, mutual benefits and reciprocity, Chinese energy enterprises are actively involved in international energy cooperation, participating in overseas energy infrastructure projects and expanding cooperation in energy engineering and services. Ninety per cent of Chinese enterprise-invested energy resources



abroad are sold locally, thus increasing and diversifying supplies in the global energy market. When investing in foreign countries, Chinese energy enterprises abide by local laws and regulations, and respect the religious beliefs and customs of the local people. They actively make contributions to local economic and social development while achieving self-growth.

For a fairly long time to come, international energy trade will remain the major way by which China utilizes foreign energy sources. China will improve policies for fair trade and optimize the trade structure, and conduct energy imports and exports in accordance with the WTO rules. It will diversify the modes of trade and comprehensively use such methods as futures trade, long-term agreements, entrepot and barter trade. China will actively participate in global energy management. It will intensify exchanges and cooperation with other countries, addressing together the impact of the international monetary system, excessive speculation and energy market monopoly, thereby maintaining the stability of international energy market and energy price.

Energy is of vital importance to economic development and people's well-being. In order to reduce conflicts and inequality brought about over access to energy resources, achieve a stable growth of the world economy and make the economic globalization lead to a balanced, universally beneficial and win-win development, the international community should foster a new energy security concept featuring mutually beneficial cooperation, diversified development and common energy security through coordination. To jointly ensure global energy security, the Chinese government calls for international efforts in the following three aspects:

- Strengthening dialogues and exchanges. Strengthening dialogue and communication among energy exporting, consuming and transiting countries is the foundation of international energy cooperation. The international community should further cement its bilateral and multilateral ties; increase dialogues and exchanges in the fields of efficient use of energy, energy conservation, environmental protection, energy management and energy policy; promote monitoring and emergency response mechanisms for the global energy market; and deepen the cooperation in the fields of information exchanges, personnel training and coordination.
- Carrying out effective energy cooperation. Upholding the principles of reciprocity, mutual benefit and common development, the various countries should ensure mutually beneficial cooperation in international energy resources exploration, enrich and improve cooperative mechanisms and methods, increase the international energy supply, and diversify supply channels. They should work together to stabilize the prices of bulk energy commodities, secure the energy needs of various countries, and maintain the normal order of the energy market. For the sake of sustainable development, the developed countries should actively provide and transfer clean and highly efficient energy technology to developing and underdeveloped countries and together promote green development globally on the condition that intellectual property rights are protected. The international community should strive hand in hand to help the least-developed countries to eliminate energy poverty, increase energy services and promote sustainable development.
- Working together to maintain energy security. A fair and rational international energy management mechanism is a prerequisite for a stable global energy market. The international community should work collaboratively to maintain stability in oil producing and exporting countries, especially those in the Middle East, to ensure the security of international energy transport routes and avoid geopolitical conflicts that affect the world's energy supply. The various countries involved should settle major international energy disputes through dialogue and consultation. Energy issues should not be politicized, and the use of force and armed confrontation should be avoided.

**49. Notice of Special Fund for Foreign Economic and Technological Cooperation in 2011 (MoF & MOFCOM, April 2011)**

Note by the editors: For text, see Document 38 above.

**Section Five: Measures Relating to Overseas Investment in Manufacturing and Processing<sup>7</sup>**

**50. Administrative Regulation of the Discount Interest Rate of Loans for Working Foreign Exchanges for the Overseas Enterprises of Raw Processing Trade (MOFTEC, MOF, State Economic and Trade Commission, People's Bank of China, SAFE, May 1999)**

Source: MOFCOM website. Retrieved from <http://fec2.mofcom.gov.cn/aarticle/laws/200211/20021101239724.html>

The Commissions/Bureaus/Offices of Foreign Trade and Economic Cooperation, the Bureaus/Office of Finance, the Economic and Trade Commissions (Economic Commissions, Economy Planning Commissions) of each Province, Autonomous Region, National Municipality and Solely-planned Municipality, the National Enterprises of Foreign Trade and Economy, and five other enterprises of Foreign Trade and Economy (not including Nanguang Group Corporation Ltd., Residence in Macao):

According to Notice on Transmitting [the] "Suggestion on Encouraging the Enterprises to Develop the Businesses of Overseas Processing Trade Made by the Ministry of Foreign Trade and Economic Cooperation (MOFTEC), the State Economic and Trade Commission (SETC), and the Ministry of Finance (MOF)" by the Office of State Council (OSC), (OSC[1999]No.17), the MOFTEC, the MOF, the SETC, the People's Bank of China, the State Administration of Foreign Exchange (SAFE) have jointly formulated the Administration Regulation of the Discount Interest of Loans for Working Foreign Exchanges for the overseas enterprises of processing trade. Now we distribute it to you, please implement it accordingly. If there are any problems in execution, please report them to the MOFTEC in time by letter.

Enclosure:

The Administration Regulative of the Discount Interest of Loans for Working Foreign Exchanges for the Overseas Enterprises of Raw Processing Trade

**Chapter 1: General Principles**

**Item 1** According to the Notice on Transmitting [the] "Suggestion on Encouraging the Enterprises to Develop the Businesses of Overseas Processing Trade by the Ministry of Foreign Trade and Economic Cooperation (MOFTEC), the State Economic and Trade Commission (SETC), and the Ministry of Finance (MOF)" by the Office of State Council (OSC) (OSC[1999]No.17), the regulation has been formulated specially to promote [Chinese enterprises' development of] overseas raw material processing and assembling.

**Item 2** The "Loans for Working Foreign Exchanges" in the regulation refer to the circulating funds of the short-term loans of foreign spot exchange which the overseas enterprises of processing trade obtain from domestic banks (Loans of Foreign Exchange for short). The term of the loans does not exceed one year.

<sup>7</sup> See explanatory text at footnote 2.

**Item 3** The overseas enterprises of processing trade should borrow, use or refund the loans according to related regulations of foreign exchange management in our country.

## **Chapter 2: Application Conditions and Forms of Discount Interest**

**Item 4** [E]nterprises [that] are approved to be engaged in overseas processing trade by the nation, and have received the Approval Certificate of the Overseas Enterprises of Processing trade, the People's Republic of China, ... can apply for the Discount Interest of the Loans of Foreign Exchange obtained from banks.

**Item 5** For the approved Loans of Foreign Exchange for which the overseas enterprises applied, the bank [will] implement [the loan] according to its normal interest rate. The Central Foundation of Foreign Trade Development (CFFTD) will pay the discount interest to the enterprises by 2 per cent .

**Item 6** All discount interest will [be paid] in RMB, and the amount under yuan will not count.

**Item 7** The "exchange rate" refers to the weighted average RMB price converted into by the SAFE from the foreign currency of that month, which contains the interest balance date.

**Item 8** The discount interest will be counted at the time that the bank takes the interest of the loans from the enterprises. Any interest added and default interest outside the normal term of the loans will not be included in the discount. The discount interest will be appropriated every half year.

## **Chapter 3: Application Procedures and Requirements**

**Item 9** The applications for the discount interest will be managed by local authorities. After the [enterprises'] application materials for the discount interest are examined by the lending bank, they are required to report them to the provincial agency of FTEC before January 31st or July 31st.

**Item 10** After examining the materials of the discount interest according to the principle of "[s]trengthening the emphasis, and supporting the priority," and being checked by the provincial bank corresponding to the lending bank, the provincial agency of FTEC reports them to the provincial agency of finance with the ETC on February 15 and August 15, and [provides] the duplicated copies to the MOFTEC [and] the SETC at the same time. After examining the materials of the applications for discount interest, the provincial agency of finance provides the result of the review together with the "Application Forms of the Discount Interest of the Loans of Foreign Exchange" to MOF to obtain the discount interest, and sends the duplicated copy of the result of review to the provincial agencies of FTEC and ETC.

**Item 11** The following materials should be provided for the application for the discount interest:

- (1) the Approval Certificate of the Overseas Enterprises of Processing Trade, the People's Republic of China;
- (2) the contract of the Loans of Foreign Exchange offered by the bank, the balance testimonial of receiving the interest, and the balance bill of paying the interest of the enterprises;
- (3) the Application forms of the discount interest of the Loans of Foreign Exchange (Annex, one form, two copies).

## **Chapter 4: Payment and Management of the Interest Money**

**Item 12** After checking the relevant material with the head bank of the lending bank, the MOF will appropriate the interest money down, and send the duplicated copies to the MOFTEC and SETC.

**Item 13** The interest money will be appropriated to the enterprises through the provincial Bureaus/Offices of Finance by the MOF before February 28 and August 31 every year.

**Item 14** The interest money that the enterprise[] receives will be used to reduce the expense of financial affairs.

**Item 15** The provincial agencies of FTEC and Bureaus/Offices of Finance are required to supervise, examine [and] ensure the payment of the interest money, and report them to the MOFTEC and the MOF before March 31 and September 30 every year.

**Item 16** The MOFTEC and the MOF will examine selectively the execution of the discount interest and the payment of the interest money.

### **Chapter 5: Punishment**

**Item 17** [It is] forbidden for [t]he approved enterprises enjoying the discount interest [to] do the following:

- (1) Change the use of the Loans of Foreign Exchange for other uses without authorization;
- (2) Change the use of the interest money without authorization;
- (3) Take wrong[ful] actions to cheat the interest money;
- (4) Reject or [fail to] cooperate with the supervision [and] examinations stipulated in the regulation.

For the enterprises [whose conduct falls under category] (1) or (2) in item 17, their qualification for applying the discount interest will be canceled; [f]or the enterprises [whose conduct] belong[s to category] (3), their [business qualification] for overseas trade processing will be canceled, and [it will be] suggest[ed that relevant] leaders giv[e] administrative sanction to the main principals or other principals; those committing a crime will [be] investigate and treat[ed as criminally responsible]. For the enterprises [whose conduct] belong[s] to [category] (4)[,] they should [come into compliance] in a certain time period; for those unable to [comply, their] qualification for applying the discount interest will be canceled[.]

### **Chapter 6: Supplementary Articles**

**Item 18** The MOFTEC and the MOF are responsible for the explanation and revision of the regulation.

**Item 19** The provisional regulations are to be put into effect from the date of its issuance.

### **51. Provisional Regulations of Annual Examination of the Approval Certificate for the Overseas Enterprises of Raw Material Processing and Assembling (MOFTEC, July 1999)**

Source: MOFCOM website. Retrieved from <http://english.mofcom.gov.cn/aarticle/policyrelease/domesticpolicy/200211/20021100049447.html>

The Commissions/Bureaus/Offices of Foreign Trade and Economic Cooperation of each Provincial, Autonomous Region, National Municipality and Solely-planned Municipality, and National enterprises:

Now we distribute to you the *Provisional Regulations of Annual Examination of the Approval Certificate for the Overseas Enterprises of Raw Material Processing and Assembling*, and you are authorized to execute it subsequently. If there are any problems in execution, please report them to the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) (the Development Department) in time.

For the Approval Certificates issued before August 1st, 1999, the deadline of the annual examination is September 30th, 2000.

Enclosure: As follows

Supplementary documents

*The Provisional Regulations of Annual Examination of the Approval Certificate for the Overseas Enterprises of Raw Material Processing and Assembling*

In order to enhance the management of the businesses of overseas raw material processing and assembling (the Businesses of OMPA for short), and accelerate the sustainable, stable and healthy development of the Businesses of OMPA, the regulations of annual examination of the Approval Certificates for the Overseas Enterprises of Raw Material Processing and Assembling (Approval Certificates for short) have been formulated as follows:

1. The range of annual examination

For the enterprises engaged in the Business of OMPA approved by the state, their Approval Certificates are required to be presented for the annual examination.

2. The time of annual examination

Every time when the Approval Certificate expires one year since its issue, the main body of investment of the Overseas Enterprises of Raw Material Processing and Assembling (the Main Body of Investment) should handle the annual examination with its Approval Certificate in two months.

3. The process of annual examination

The investor [that] belongs to national enterprises should handle its annual examination directly with the Ministry of Foreign Trade and Economic Cooperation (MOFTEC).

The investor [that] belongs to other enterprises should handle its annual examination with local provincial agencies (Commissions/Bureaus/Offices of Foreign Trade and Economic Cooperation, FTEC).

4. The materials of annual examination

(i) The registration form for annual examination (Annex 1);

(ii) The balance sheet and the statement of gains and losses of the previous year of the overseas enterprises in the previous year;

(iii) The export statistics of the previous year of the investor, the raw material export statistics of the previous year of the overseas enterprises, and related evidentiary materials;

(iv) The materials that the business agency of our embassy assessed the businesses of the overseas enterprises;

(v) The summary of the businesses of overseas enterprises;

(vi) The original approval certificate;

(vii) The duplicated registration document of overseas enterprises.

5. The MOFTEC or the provincial agency of FTEC will examine and verify the materials of annual examination in 10 workdays, and affix the special seal of annual examination for the Overseas Enterprises of Raw Material Processing and Assembling on the Annual Examination Column of the Approval Certificate, which have passed the annual examination. (Annex 2)

6. The overseas enterprises, whose Approval Certificate does not receive, or pass the annual examination, will not bear the corresponding favorable policies of the nation. For the overseas enterprise that belongs to one of the following, its Approval Certificate will not be qualified:

- (i) The amount of exports was under ... US\$0.5 million for two successive years;
- (ii) The business has been in deficit for three years;
- (iii) There exist unlawful or violating behaviours.
- (iv) Did not provide business materials on time according the requirements, or did not obey the management of our embassy.

7. Every provincial agency of FTEC should submit the seals to the MOFTEC for the record before August 15th, 2000.

8. Every provincial agency of FTEC should submit the report of annual examination to the MOFTEC for the record from January 1-15 and July 1-19 every year.

9. The MOFTEC is responsible for the explanation of the provisional regulations.

10. The provisional regulations are to be put into effect from the date of its issuance.

#### Annex 1

The sample seal of annual examination by the MOFTEC is as follows:

The Ministry of Foreign Trade and Economic Cooperation

Special Seal of Annual Examination

The Overseas Enterprise of Raw Material Processing and Assembling

#### Annex 2

The sample seal of annual examination by the provincial agency of FTEC is as follows:

The Commissions/Bureaus/Offices of Foreign Trade and Economic Cooperation, Province or Municipality

Special Seal of Annual Examination

The Overseas Enterprise of Raw Material Processing and Assembling

**52. Notice of the National Development and Reform Commission, the Export-Import Bank of China on Giving Credit Support to the Key Overseas Investment Projects Encouraged by the State/Circular on Supportive Credit Policy on Key Overseas Investment Project Encouraged by the State (NDRC & China ExIm Bank, October 2004)**

Retrieved from <http://www.lawinfochina.com/display.aspx?lib=law&id=3765>; [http://209.200.107.14/english/law2\\_disp.asp?sublawcode=SUB4885447119161114&lawcode=LAW4861112671113915&country=China](http://209.200.107.14/english/law2_disp.asp?sublawcode=SUB4885447119161114&lawcode=LAW4861112671113915&country=China)

*Note by editors: What follows is an excerpt relating to overseas investment in manufacturing and processing. For complete text, see Document 17 above.*

II. The special loans for overseas investments shall be mainly used for supporting the following key overseas investment projects:

...

(2) Overseas productive projects and infrastructure projects which can give impetus to the export of domestic technologies, products, equipment, and labor services, etc.;

...

**53. Circular on Issues Relating to Simplifying the Examination and Approval Procedures for the Projects of Overseas Processing Trade and Delegating the Authority (MOFCOM & SAFE, June 2003)**

Source: MOFCOM website. Retrieved from [http://www.fdi.gov.cn/pub/FDI\\_EN/Laws/law\\_en\\_info.jsp?docid=52431](http://www.fdi.gov.cn/pub/FDI_EN/Laws/law_en_info.jsp?docid=52431)

For further carrying out the spirit of the 16th National Congress of the CPC and the 2nd plenipotentiary session of the 16th Committee of the CPC, further implementing GuoBanFa [1999] No.17 Document, encouraging and promoting the development of overseas processing trade, and speeding up the strategy of ["Going Global]," the Ministry of Commerce and the SAFE have adjust[ed] the examination and approval Procedures for the projects of overseas processing trade and the delegating of the authority in compliance with the adjustment of the institutions and functions of the relevant organs of the State Council and the requirements deepening the reforms on the system of administrative examination and approval. The relevant issues are hereby notified as follows:

I. The projects of overseas processing trade with investment by Chinese parties no more than US\$3 million (inclusive) will be reviewed and ratified by the local competent department of foreign economics and trade of the provinces, autonomous regions and municipalities directly under the Central Government and municipalities on the state plan (including the Foreign Economic and Trade Bureau of Xinjiang Production and Construction Regime, hereinafter referred to as [the] "local competent department") where the investment subjects are located. The projects of overseas processing trade with investment by Chinese parties more than US\$3 million should be submitted by the local competent department for review and approval by the Ministry of Commerce.

The projects of overseas processing trade invested and sponsored by the enterprises under the central government and their affiliated enterprises should be submitted by the headquarters of the central enterprises for review and approval by the Ministry of Commerce.

II. Procedures for application and submission of the projects of overseas processing trade

(1) For the projects of overseas processing trade to be reviewed and ratified by the local competent department, the local competent department shall upon receipt of the relevant application review and decide on whether to grant ratification after consent by the economic and commercial office of our embassy (consular) in foreign countries.

(2) For the projects of overseas processing trade to be reviewed and ratified by the Ministry of Commerce, the local competent department or the headquarters of the central enterprises shall report the case for review and ratification by the Ministry of Commerce after consent by the economic and commercial office of our embassy (consular) in foreign countries.

(3) For the projects of overseas processing trade to be reviewed and ratified by the local competent department or to be submitted for review and ratification, joint signature should be obtained from the local competent department of economics and trade. The local competent department of economics and trade should put forth opinions within five working days.

(4) For the projects of overseas processing trade requiring for domestic purchase of foreign exchanges and remittance to foreign countries, review and examination should be made by the local administration of foreign exchanges or the department of foreign exchange administration on the capital sources of foreign exchanges for overseas investment according to the relevant provisions of the *Circular of the General Administration of Foreign Exchanges on Issues Relating to Simplifying the Review and Examination of the Capital Sources of Foreign Exchanges for Overseas Investment* (HuiFa [2003] No. 43) before submission to the local competent department. The review and examination of the capital sources for the projects of overseas processing trade with investment by Chinese parties of no more than US\$3 million (inclusive) will be handled by the local administration of foreign exchanges or the department of foreign exchange administration where the investment subjects are located. The review and examination of the capital sources for the relevant projects with investment by Chinese parties more than US\$3 million will be initially handled by the local administration of foreign exchanges or the department of foreign exchange administration where the investment subjects are located before final review and examination by the SAFE.

### III. Key point in review of the projects of overseas processing trades

When various levels of competent department review and ratify the projects of overseas processing trade, the main materials to be reviewed and examined include: survey of the projects of overseas processing trade (Especially the qualifications of the investment subjects and the product exports brought forth); contract and articles of associations of the enterprises of overseas processing trade, business licenses of the investment subjects (duplicate), reply upon review and examination by the administration of foreign exchanges on the capital sources of foreign exchanges for overseas investment, proposals on no further review and approval of projects of overseas processing trade and the feasibility study report.

### IV. Approval certificates of the overseas enterprises of processing and assembling with brought-out materials

The Approval Certificate of the Overseas Enterprises of Processing and Assembling with Brought-out Materials (hereinafter referred to as the "Approval Certificate") is a legal documents uniformly printed by the Ministry of Commerce for certifying that the projects of overseas processing trade has been finally verified and ratified by the competent state department of outward investment. After ratifying the projects of overseas processing trade, the local competent department shall fill in the Form of Registration and Filing of Overseas Processing Trade Enterprises (format attached below) and cover its official stamp thereon, which should be submitted together with the review and ratification documents, the opinions provided by the economic and commercial office of our embassy (consular) in foreign countries and the opinions on examination of the capital sources of foreign exchanges issued by the administration of foreign exchanges for registration and filing by the Ministry of Commerce before obtaining the approval certificates. Upon the maturity of online issuance of the certificates, the approval certificates will be issued by the local competent department by proxy.



Within 60 days upon obtaining the approval certificates, the investment subjects shall handle with the registration of foreign exchanges for overseas investment at the local administration of foreign exchanges or the department of foreign exchange administration where the investment subjects are located. The formalities for purchase and remittance of foreign exchanges will be handled with against the approval certificates and the reply on the review and examination of the capital sources of foreign exchanges.

V. When investing in overseas processing trade, the investment subjects shall firstly make use of their own capital of foreign exchanges, and incase their own capital of foreign exchanges is insufficient, domestic loans of foreign exchanges may be adopted or foreign exchanges may be purchased.

VI. Without permission by the Ministry of Commerce, the local competent departments shall not delegate their authority for review and ratification of the projects of overseas processing trade to their subordinate units.

VII. Since the promulgation and distribution of the *Circular of General Office of the State Council on Transferring the Opinions of the MOFTEC*, the State Economic and Trade Commission and the Ministry of Finance on Encouraging Enterprises in Developing Overseas Processing and Assembling Business with Brought-out Materials (GuoBanFa [1999] No.17), the overseas processing trade has played an important role in promoting [t]he development of foreign relationship[s], expanding exports, furthering the adjustment of industrial structure, and cultivating the transnational companies of our country. For a pretty long term in the future, such business is still an important direction to be encouraged in our overseas investment. Each and every unit shall in the spirit of GuoBanFa [1999] No.17 Document keep on doing well in the organization and promotion of such business, . . . [focus on] find[ing] problems and summariz[ing] experiences during the actual works, and closely communicate with the economic and commercial office of our embassy (consular) in foreign countries, thus strengthening the organization, management and coordination in the projects of overseas processing trade and avoiding blind overseas deployment, repeated construction and disorder[ly] competition.

In [the] case of any issues in work upon the distribution of the Circular, each unit is required to report to the Ministry of Commerce (the Department of Cooperation) and the SAFE (the Department of Capital) in a timely way.

Hereby is the notification.

The Ministry of Commerce, the State Administration of Foreign Exchanges 2003-06-26

#### **54. Notice of Special Fund for Foreign Economic and Technological Cooperation in 2011 (MoF & MOFCOM, April 2011).**

*Note by the editors: For text, see Document 38 above.*

## *Section Six: Measures Relating to Corporate Social Responsibility, Environmental Protection, and Social Impacts<sup>8</sup>*

### **55. Shenzhen Stock Exchange Social Responsibility Instructions to Listed Companies (Shenzhen Stock Exchange, September 2006)**

Source: Shenzhen Stock Exchange website. Retrieved from <http://www.szse.cn/main/en/rulseandregulations/sserules/2007060410636.shtml>

**Article 1** These Instructions have been formulated in accordance with the Company Law, the Securities Law and other laws, administrative regulations and the rules of competent authorities for the purpose of implementing scientific outlook of social development, building social harmony, accelerating sustainable economic and social development and promoting commitment to social responsibilities.

**Article 2** For the purpose of these Instructions, “social responsibilities” refer to the obligations listed companies should assume for social development, for natural environment and resources, and for the interested parties including their shareholders, creditors, employees, customers, consumers, suppliers and communities.

**Article 3** While pursuing economic results and protecting shareholders’ interests, listed companies (hereinafter, “Companies”) should proactively protect the legitimate rights and interests of their creditors and employees, be honest and trustworthy towards their suppliers, customers and consumers, and commit themselves to social welfare services like environmental protection and community development in order to achieve social harmony.

**Article 4** [I]n business operations, Companies should follow the principles of free will, fair trade and good faith, observe moral and business ethics, and be subject to the supervision of the government and the public. They should not seek improper benefits by bribery, smuggling and other unlawful activities, nor infringe upon other people’s intellectual properties like trademarks, patents and copyrights for the purpose of unfair competition.

**Article 5** Companies shall, as required by these Instructions, perform their social responsibilities, make regular evaluations and issue voluntary disclosures on the performance.

**Article 6** These Instructions apply to those companies whose shares are listed on Shenzhen Stock Exchange (hereinafter, “Exchange”).

#### **Chapter 2: Protection of the Interests of Shareholders and Creditors**

**Article 7** Companies shall improve their corporate governance structure, treat their shareholders fairly and ensure that their shareholders enjoy all the rights and interests as provided in laws, regulations and rules.

**Article 8** Companies shall select appropriate times and venues for convening shareholders’ meetings. Online voting is advocated, [with] a view to facilitat[ing] shareholder participation in shareholders’ meeting for the exercise of their rights.

**Article 9** Companies shall [fulfil] their information disclosure obligations in strict accordance with laws, regulations, rules and the Exchange’s rules. Voluntary disclosure is advocated with respect to information that may have an impact on the decision making of shareholders and other investors. All investors shall be treated in a fair manner. Selective disclosure is prohibited.

**Article 10** Companies shall formulate long-term and consistent profit distribution policies and methods and work out viable and reasonable bonus plans in return for the shareholders.

<sup>7</sup> See explanatory text at footnote 2.

**Article 11** Companies shall ensure that they are financially sound and their assets and capital are safe. Due regard shall be paid to creditors' interest. Maximization of shareholder interests shall not be made at the expense of creditor interests.

**Article 12** In business operations and decision-making processes, Companies shall give ample consideration to the legitimate rights and interests of their creditors and inform the creditors in a timely manner of the material information relating to the creditors' rights and interests. Companies shall furnish cooperation and support when the creditors seek access to Companies' financial, operational and management information for the purpose of protecting their interests.

### **Chapter 3: Protection of Employee Interests**

**Article 13** Companies shall strictly abide by the Labour Law, protect the legitimate rights and interests of their employees in accordance with law, establish and improve employment systems such as remuneration and incentives, and ensure that employees enjoy their rights and fulfil their obligations.

**Article 14** Companies shall respect the dignity of the employees and guarantee their legitimate rights and interests, care for them, promote harmonious and stable relations between the employees and employer, and provide special labour protection to female employees in accordance with State regulations. They shall not unlawfully force employees to work, nor shall they inflict corporal punishment, physical or mental intimidation, verbal humiliation or any other form of abuse.

**Article 15** Companies shall establish and improve the system of occupational safety and health, strictly implement relevant rules and standards of the State, educate the employees accordingly, provide them with a healthy and safe working and living environment, minimize the chance of accidents, and reduce occupational hazards.

**Article 16** Companies shall follow the principles of pay based on work and equal pay for equal work. Pay shall not be deducted or delayed without justification. It is prohibited that temporary contracts or any other disguised probation contracts be signed with employees to reduce their wages and social security.

**Article 17** Companies shall not interfere with employees' freedom of religious belief. No discrimination shall be imposed regarding employment, remuneration, training, promotion, dismissal or retirement due to ethnic community, race, nationality, religious belief, gender or age.

**Article 18** Companies shall establish a vocational training system, mobilize and use the funds for vocational training in accordance with State regulations, make great efforts to train employees, encourage and support on-the-job training and continuing education for the purpose of providing more career development opportunities.

**Article 19** Companies shall, in accordance with the provisions in the Company Law and their articles of association, establish a system for selecting and appointing directors and supervisors from among the employees so as to ensure that employees have full rights in corporate governance. Companies shall support the trade union to conduct legitimate activities. They shall solicit opinions, through the employee representative meetings or union meetings, on matters related to the interests of employees such as wages, welfare, occupational safety and health, and social insurance and pay due regards to employees' reasonable needs.

### **Chapter 4: Protection of the Interests of Suppliers, Customers and Consumers**

**Article 20** Companies shall be honest and trustworthy towards their suppliers, customers and consumers. They shall not seek profits by means of false advertisement or promotion, nor shall they infringe upon the intellectual properties of their suppliers and customers like copyrights, trademarks and patents.

**Article 21** Companies shall guarantee that the commodities or services they provide are safe. With regard to commodities and services that may threaten personal or property safety, a truthful explanation, plain warning as well as user instruction shall be provided.

**Article 22** In case serious defects are found in the commodities and services they provide, which may pose threats to the personal or property security of customers even in proper usage, Companies shall immediately report to the competent authorities and make public announcement. In the meantime, preventive measures shall be taken against any possible damage.

**Article 23** Companies shall urge their customers and suppliers to comply with a business code of conduct and moral ethics or stop partnership with customers or suppliers who refuse to make improvement in this regard.

**Article 24** Companies shall establish appropriate procedures to strictly monitor and prevent commercial bribery between the Companies/employees and the customers or suppliers.

**Article 25** Companies shall keep confidential the personal information of their suppliers and customers and, without authorization or permission, may not use or sell such information for profit.

**Article 26** Companies shall provide excellent after-services and properly handle the complaints and suggestions submitted by suppliers, customers and consumers.

#### **Chapter 5: Environmental Protection and Sustainable Development**

**Article 27** Companies shall formulate environmental protection policies based on their impact on the environment. There shall be dedicated human resources in charge of the establishment, implementation, maintenance and improvement of their environmental protection system, and furnish necessary manpower, resources as well as technical and financial support to environmental protection.

**Article 28** Companies' environment protection policies normally cover the following areas:

- (1) to comply with all the laws, regulations and rules that govern environmental protection;
- (2) to reduce resource consumption, including raw materials and fuels;
- (3) to reduce waste generation and make every effort to recover wastes for recycling;
- (4) to avoid, to the greatest extent, waste generation that pollutes the environment;
- (5) to apply environmentally friendly materials and energy-saving, waste-reducing design, technology and raw materials;
- (6) to minimize the adverse impact of corporate performance on environment;
- (7) to provide training to employees for the purpose of enhancing environmental protection awareness; and
- (8) to create an environment for sustainable development.

**Article 29** Companies shall implement, as far as they can, facilities and processes that allow the greatest utilization of resources and lowest discharge of pollutants, as well as economical and rational technology for comprehensive utilization of wastes and pollutant treatment.

**Article 30** Companies shall report to and file with the competent authorities regarding pollutant discharge. In case the discharge exceeds the national or regional standards, Companies shall pay a fee in accordance with the State regulations and assume the responsibility for the elimination.

**Article 31** Companies shall allocate dedicated human resources for regular inspection of implementation of environmental protection policies. Behaviour in breach of environmental protection policies shall be rectified.

#### **Chapter 6: Public Relations and Social Welfare Services**

**Article 32** Companies shall pay due regard to the interests of their communities in business operation. The Exchange encourages that dedicated unit be set up and dedicated personnel be allocated to harmonize the relations between Companies and communities.

**Article 33** Companies shall, as much as they can, take part in public welfare activities in their regions relating to environmental protection, education, culture, science, public health, community development and poverty relief in the best interest of the regions.

**Article 34** Companies shall accept the supervision and inspection of the competent authorities and pay due regard to the public comments and media reports on themselves.

#### **Chapter 7: Institutional Building and Information Disclosure**

**Article 35** The Exchange advocates that Companies should establish the social responsibility mechanism as required by these Instructions and work out social responsibility reports on a regular basis based on their review and evaluation of the status quo.

**Article 36** Companies may release their social responsibility reports along with their annual reports. The social responsibility report shall include, but are not limited to, the following:

- (1) implementation of social responsibility relating to employee protection, impact on environment, product quality and community relationship;
- (2) assessment of implementation of these Instructions and reasons for the gap, if any; and
- (3) measures for improvement and the timetable.

#### **Chapter 8: Supplementary Provisions**

**Article 37** The power of interpreting these Instructions rests with the Exchange.

**Article 38** These Instructions come into effect as of the date of promulgation.

## 56. *Guidelines to the State-owned Enterprises Directly Under the Central Government on Fulfilling Corporate Social Responsibilities (State Council's State-Owned Assets Supervision and Administration Council, December 2007)*

Source: Ministry of Commerce website. Retrieved from <http://csr2.mofcom.gov.cn/aarticle/laws/201008/20100807067057.html>

These Guidelines are proposed to comprehensively implement the spirit of the 17th CPC National Congress and the Scientific Outlook on Development, and give the impetus to state-owned enterprises (SOEs) directly under the central government (referred to as CSOEs hereafter) to earnestly fulfill corporate social responsibilities (CSR), so as to realize coordinated and sustainable development of enterprises, society and environment in all respects.

### 1. Fully Understand the Importance of Fulfilling CSR by the CSOEs

- **Fulfilling CSR is a practical action taken by the CSOEs to apply the Scientific Outlook on Development.** Fulfilling CSR requires the CSOEs, insisting on the principle of human-oriented and the Scientific Outlook on Development, to be responsible to stakeholders and environment, so as to [properly] achieve [a balance] among the growth of enterprises, social benefit and environment protection. This is ... an important measure for promoting the socialist harmonious society and also entails the CSOEs thoroughly implement[ing] China's new ideas about economic development, social progress and environment protection.
- **Fulfilling CSR is an overall social requirement to the CSOEs.** The CSOEs, big enterprises in China's key industries, are the backbone of the country's economy and have a vital bearing on national security. Their production and operation involve all aspects of entire economy, society and people's livelihood. Therefore, fulfilling CSR is not only their mission and responsibilities, but also an ardent expectation and requirement from the public.
- **Fulfilling CSR is the necessary condition for realizing sustainable development of the CSOEs.** Performing CSR and embedding the concepts and requirements of CSR into their business strategies, operations and corporate culture will help update their idea innovation and transformation of the pattern of growth, inject vitality and creativity to the enterprises, add value to their brand and image, improve their staff qualification and enhance cohesion of the CSOEs. All of these will definitely bring about a dramatic progress to CSOEs in development quality and level.
- **Fulfilling CSR is [the necessary condition] for the CSOEs to participate in international economic cooperation.** As the progress of economic globalization, the international community is concerned more and more [about] the performance of an enterprise in social responsibilities. By fulfilling CSR, it is either helpful in establishing a "responsible" public image by Chinese enterprises and more internationally influential, or significant for China to spread an image as a responsible nation.

### 2. Guidelines, Requirements and Principles

Guidelines: CSOEs should take Deng Xiaoping Theory and the Important Thought of Three Represents as the guiding principles, thoroughly apply the Scientific Outlook on Development, adhere to the demands of human-oriented policy and sustainable development strategy from the Central Government of China, enhance their awareness of social responsibility and sustainable development, make overall planning with due consideration of every aspect. They should actively embody their responsibilities and set up good examples for other enterprises in fulfilling CSR so as to promote the construction of a harmonious and well-off society.

**Requirements:** CSOEs should enhance the awareness of CSR; actively implement CSR, setting examples in legal and honest business operation, resource-saving and environment protection. CSOEs should also the model in building human-oriented and harmonious enterprise, and become the backbone of China not only in the economy but also in CSR.

**Principles:** CSOEs should integrate CSR with their own reform and development, and regard the implementation of CSR as an important content of setting up modern enterprise system and enhancing their competitiveness. By transforming the pattern of growth and achieving sound and rapid development, they should implement CSR according to the practical situation of the country and the circumstances of themselves, highlight key issues and make out concrete plan, so as to strive for a substantial effect in implementing their CSE. In addition, CSOEs ought to give top priority to ensuring work safety, safeguarding the legal interests of employees, promoting career development of employees. These, as measures to build a harmonious relation between the enterprise and its employees, will also contribute to the China's undergoing program of building a harmonious society.

### 3. Main Content of Fulfilling CSR by CSOEs

- **Insisting on a legal and honest way in business operation.** The CSOEs are asked to comply with regulations and laws, public ethnics and commercial conventions, and trade rules. They should also fulfill their tax obligations, undertake the interests of investors and creditors, protect intellectual property rights, keep business creditability, oppose improper competition and eradicate corruption in commercial activities.
- **Constantly improving ability of making sustainable profits.** They should improve corporate governance, and advocate scientific and democratic decision making. They should optimize their development strategy, focus on and strengthen their core businesses, reduce management layers and distribute resources in a reasonable way. Business administration and capability of control and supervision are enforced, such as minimizing operational costs, strengthening risk precaution, increasing investment profit ratio, and enforcing market competitiveness as well.
- **Improve product quality and service.** CSOEs should try to ensure the safety of products and quality of services, update product performance and service system aiming at providing well-qualified products and service to consumers. They should protect consumer interests, properly handle consumer complaints and suggestions and try their best to meet the demand of consumers. Only by this way can CSOEs establish a good image in consumers.
- **Strengthening resource conservation and environmental protection.** The large State-owned enterprises should take their responsibilities and the lead in energy saving and emission reduction. So the enterprises have to upgrade their technology and equipment, and engage in the recycling economy, so as to develop energy-conserving products and improve resource utilization efficiency. What is more, they should invest more in environment protection, rationalize production procedures, try to decrease the pollutant emissions with a target lower energy consumption and less pollution but higher production efficiency and output.
- **Promoting independent innovation and technological advancement.** CSOEs are required to complete mechanisms of technological innovation, increase investment in research and development so as to enforce independent innovation capability. They should accelerate the development of high and new technologies, especially making new breakthroughs in key technologies of the industry and fundamental research, and the readjustment of traditional industries. They also need to attach more attention to intellectual property rights, and by implementing IP strategy to promote technical innovation, to achieve some core technologies and brands, and foster industry upgrading and restructure.
- **Ensuring production safety.** Responsibility System for Safe Production should be established and more investment in production safety. Serious safety accidents ought be strictly prevented and forbidden. CSOEs should also complete their emergency management system; continuously improve the emergency management and emergency handling capacity. Safe and healthy working conditions and living

environment are necessary to ensure the health of employees, [and] prevent any [occupational harm] and other diseases [suffered by] employees.

- **Protecting legal rights of employees.** Employment contracts with employees should be signed and respected, adhere to the principle of equal pay for equal work, build up the mechanism of salary increasing, and buy social insurance regulated by the government. All employees ought to be respected and treated equally. Any discrimination of gender, nationality, religion and age is prohibited. In addition, enterprises should provide on-duty education and training, as well as equal opportunities of personal development. CSOEs should further their efforts to implement the employee representatives' convention system, to publicize corporate affairs, and to advance democratic management. Employees' livelihoods should be fully considered, especially those having difficulties and anxieties.
- **Participating in social public welfare programs.** CSOEs ought to encourage their employees to volunteer for social services, and actively participate in community and social welfare program, such as charities, donations, and giving support to schools, cultural or hygiene activities. Upon the occurrence of major natural disasters and emergency accidents, CSOEs also need to provide financial, material and manpower support.

#### 4. Main Measures to Fulfill CSR

- **Establishing awareness of CSR.** The CSOEs should understand the significance of CSR well, attach great importance to CSR in their working plan and daily business activities. Enterprise leaders ought to arrange CSR promotion within their enterprise, adopt new ideas and methods in management, striving to establish the corporate culture with CSR at the centre.
- **Completing system and mechanism for fulfilling CSR.** CSR should be integrated into corporate governance and business strategy, and implemented on all levels of their daily operations. CSOEs should also identify a department to cope with CSR affairs; gradually build a statistical index and assessment system for CSR. For those enterprises that are in a leading position in CSR, a formal CSR performance evaluation system can be set up.
- **Building the CSR information releasing system.** Enterprises having experienced in CSR work, should establish an information releasing mechanism, providing update and regular information about CSR performance and sustainable development, plans and measures in carrying out CSR. Meanwhile, a regular communication and dialogue mechanism concerning CSR should be established, so that the enterprise can have feedback from its stakeholders and give its response quickly. All the information and feedback should be publicized to receive supervision from stakeholders and society.
- **Enforcing inter-enterprise communication and international cooperation.** CSOEs are encouraged to exchange concepts and experience in fulfilling CSR with other enterprises at home and abroad, benchmark with the best CSR practices and summarize their own experience, so as to constantly improve their work. They should conduct more dialogues and communications with relevant international organizations and take part in international CSR standard formulation.
- **Strengthening CPC organizations' role in leading the CSR work of enterprises.** The CSOEs should give full play to the political core role of the Communist Party of China (CPC) branches in the enterprise; encourage CPC members to take the lead in performing CSR. Trade unions, the Communist Youth League and the women's federation are also required to contribute their efforts in fulfilling CSR, and strive to create a good environment for the enterprise to fulfill CSR.



### 57. *Nine Principles on Encouraging and Standardizing Outward Investment* (State Council, October 2006)

Unofficial translation from Global Witness. Retrieved from [http://www.globalwitness.org/sites/default/files/library/Chinese per cent 20guidelines per cent 20EN.pdf](http://www.globalwitness.org/sites/default/files/library/Chinese%20guidelines%20EN.pdf)

Note by the editors: For text, see Document 7 above.

### 58. *Green Guidelines* (ExIm Bank, as revised in 2007)

Source: Unofficial translation retrieved from [http://www.globalwitness.org/sites/default/files/library/Chinese per cent 20guidelines per cent 20EN.pdf](http://www.globalwitness.org/sites/default/files/library/Chinese%20guidelines%20EN.pdf)

China Export and Import Bank (China ExIm Bank)

Issuance Notice of the "Guidelines for Environmental and Social Impact Assessments of the China Export and Import Bank's (China ExIm Bank) Loan Projects"

*Guidelines for Environmental and Social Impact Assessments of the China Export and Import Bank's (China ExIm Bank) Loan Projects*

#### **General Principles**

**Article 1** In order to implement the national strategies for sustainable development, promote economic, social and environmental development, and effectively control credit risks, the Guidelines were developed according to the "People's Republic of China's Environmental Impact Assessment (EIA) Act," "People's Republic of China's Environmental Protection Law," "Environmental Management for Construction Project Ordinance" and other relevant state laws and regulations, and with reference to the relevant regulations and procedures for the environmental and social assessments of international financial organizations.

**Article 2** These Guidelines apply to the loan procedure of China ExIm Bank.

**Article 3** The China ExIm Bank's loan projects are classified as domestic or offshore projects, according to the area in which the projects are implemented. Domestic projects mean that the projects are implemented inside China with China Exim Bank's loan support. Offshore projects refer to the projects that are implemented outside China with China Exim Bank's loan support.

**Article 4** When China Exim Bank reviews its loan projects, not only economic benefits, but also *social benefits and environmental demands are considered*.

**Article 5 *Environmental assessment*** refers to the systematic analysis and evaluation of the environmental impacts and its related impacts on human health and safety due to the implementation of the projects. It then proposes policies and measures to reduce the impact. The scope of the impact assessment includes air, water, soil, waste, natural environment and other factors.

**Article 6 *Social impact*** refers to the systematic analysis and assessment of the impact on socio-economic, natural resources and social environment caused by project implementation, and proposes policies and measures to reduce that impact. The scope of evaluation includes labour and terms of employment, social security and health, land acquisition and migrants' protection, etc.

### **Chapter One: Domestic Project Evaluation**

**Article 7** The conditions for domestic projects should follow the government policy of Energy Conservation, Pollution Reduction and adjustment of industrial structure, control and restrain the loan commitment for industries with high-level pollution, high-level energy consumption and surplus production capacity, and eliminate financial support for inefficient production and technological projects.

**Article 8** China Exim Bank encourages clean production, especially for the creation of a circular economy, environmental protection and energy-saving pollution-preventing technological projects.

In accordance with the National Development and Reform Commission (NDRC)'s "Catalogue of Guidelines for the Adjustment of the Industrial Structure," China Exim Bank will increase the commitment for investment projects encouraged by the Government. The investment projects that are classified as "restricted by the government" will face differential treatment. "Incremental stock projects" in the restricted list will not be provided with credit support, while "stock projects" in the restricted list, if the state allows enterprises to adjust in a certain period of time, will be given the necessary credit support. If projects are not included in both lists of restriction or elimination, factors of resource conservation and environmental protection should be fully considered when providing credit support in accordance with the principle of credit.

**Article 9** When domestic non-building projects undergo the loan review, mainly the borrower's environmental compliance and status of resource and energy conservation should be reviewed. The borrowers who exceed emissions and energy consumption standards and do not meet the requirements of environmental protection and energy conservation in principle will not experience the addition of new credit lines, and [their] existing credit will be gradually withdrawn. The "energy consumption and pollutant emissions standards" refer to the industry standards and norms set by relevant state departments.

**Article 10** Domestic construction projects shall undergo not only environmental protection and energy consumption reviews, but also an environmental impact review, according to the approval advice from the EIA that are conducted by the departments in charge of environmental protection. China Exim Bank has the right to request that borrowers hand in the EIA report, EIA form and EIA registration form under the regulation of environmental protection departments. The projects that do not gain approval from the environmental protection department will not get credit support from China Exim Bank.

The specific approval procedures of the environmental protection departments can refer to the "construction project EIA document classification and approval regulation" (the State Environmental Protection Administration (SEPA) Order Year 2004 No. 15) and "construction project EIA approval procedure regulation" (the SEPA Order Year 2005 No. 29).

**Article 11** China Exim Bank, if necessary, shall take environmental and social responsibilities into account in the loan contract to monitor and restrain the behaviour of borrowers.

### **Chapter Two: Offshore Project Evaluation**

**Article 12** Offshore project assessments should abide by the following principles:

- (1) An EIA should be done during the pre-loan and loan-period review, in order to monitor the environmental impacts during post-loan management.
- (2) The host country's environmental policies and standards are the basis for evaluation. Offshore projects of the host country should abide by the requirements of their laws and regulations and obtain corresponding environmental permits. When the host country does not have a complete environmental protection mechanism or lacks environmental and social impact assessment policy and standards, we should refer to our country's standards or international practices.

(3) Respect the local people's rights to land and resources, and properly handle resettlement problems.

(4) For the projects that have serious negative impacts on the local environment, we should openly consult the public in accordance with the host country's requirements.

**Article 13** China Exim Bank follows these procedures of environmental and social assessment for offshore projects:

(1) The borrowers or project owners hand in the approval document and environmental and social impact assessment report issued by the authorities of the host country.

(2) China Exim Bank reviews the loan application documents submitted by the borrower and hires independent experts when necessary.

(3) China Exim Bank negotiates with the project owners or the borrowers to amend the construction project proposal, based on the environmental and social assessments.

**Article 14** China Exim Bank, if necessary, can require the inclusion of environmental and social responsibilities in the loan contract, in order to monitor and restrain the behaviour of borrowers.

### **Chapter Three: Loan Management and Supervision**

**Article 15** China Exim Bank shall inspect and monitor the project's construction and operation, based on the results of environmental and social impact assessments.

**Article 16** For projects under construction, the borrowers or project owners should regularly report to the China Exim Bank the actual impacts on the environment and society brought by project construction, and the status of implementation measures in eliminating and controlling these impacts.

China Exim Bank shall inspect the post-loan management of the projects including environmental and social impacts.

**Article 17** On the completion of projects, the borrowers or project owners of the construction projects should hand in the environmental acceptance documents for the completion of projects, which should follow "the environmental acceptance on the completion of the construction project management measures" (the SEPA Order Year 2001 No. 13); the borrowers or project owners of the offshore construction projects should hand in the environmental acceptance documents for completion of projects to the China EXIM Bank. The documents should meet the requirements of the host country's regulations.

**Article 18** For construction projects during the operation phase, China Exim Bank should conduct tracking management and post-evaluation work. The monitoring of a project's environmental and social impact should combine with the post-loan management of the loan projects, and the post-loan inspection report should include environmental and social impact content.

**Article 19** For projects under construction or are operating that cause serious environmental and social problems, China Exim Bank has the right to require the borrowers or project owners to take timely measures to eliminate these impacts. If they fail to eliminate the impacts of the projects, the China Exim Bank has the right to stop disbursing the loans and demand an early payback of the loan, in accordance with contract.

### **Supplementary Provisions**

**Article 20** These Guidelines were developed, interpreted and revised by the China EXIM Bank.

**Article 21** These Guidelines shall come into force upon its issuance.

2007-08-28

### 59. Shanghai Stock Exchange Notice of Improving Listed Companies' Assumption of Social Responsibilities (May, 2008)

Retrieved from <http://stock.jrj.com.cn/2008-05-14/000003642081.shtml>

Translation by IISD

*Circular of the Shanghai Stock Exchange on Strengthening Social Responsibility of Listed Companies* All listed companies:

The following requests have been issued in order to promote the active assumption of social responsibility by listed companies, to achieve sustainable and scientific development, to facilitate listed companies to direct adequate attention to the common interests of stakeholders, including company employees, creditors, clients, customers, and communities while considering the financial interest of the companies themselves and all shareholders, and to promote the sustainable development of society and the economy.

I. All listed companies should increase their awareness of their responsibility as members of society, attach importance to their non-commercial contributions to stakeholders, society, environment protection, resource utilization, etc. while pursuing economic benefits for themselves and protecting shareholder interests. The companies should consider both short-term and long-term interests on their own initiative, align self-development with overall balanced social development, and strive to go beyond their own commercial goals.

II. The companies should formulate a social responsibility strategic plan and implementing mechanisms that are in line with their realities based on the trade they engage in and their own unique operations. A corporate social responsibility strategic plan should cover the following at a minimum: code of business ethics of the company; employee protection plan and career development support plan; technology investment and research and development plan for rational resource utilization and effective environment protection; social development grant plan; and mechanisms and arrangements to implement, manage, and monitor the social responsibility plan.

III. The Shanghai Stock Exchange (SSE) encourages disclosure of unique practices and achievements of the companies in fulfilling their social responsibility, as well as disclosure of the companies' annual social responsibility reports on the SSE website at the same time when the annual reports of the companies are disclosed, according to relevant provisions in the *Securities Law and the Administrative Measures on Information Disclosure by Listed Companies*.

IV. The companies may disclose the value of their social contributions per share in their annual social responsibility reports, i.e., the additional social values per share created by the companies, calculated as follows: base the value upon the basic return per share that the company has created for shareholders, add the values that the company has created for other stakeholders, such as taxes paid, salaries paid to employees, loan interest paid to creditors such as banks, donations made by the company to outside parties, etc., and deduct other social costs incurred by the company, such as environmental pollution. Such disclosures help the general public understand the real value that the companies have created for their shareholders, employees, clients, creditors, communities, and the entire society from a more comprehensive perspective.

V. The companies may draft and finalize detailed content in their annual social responsibility reports based on their own unique features, but the reports should include the following at a minimum:

- **The companies' practices in advancing sustainable social development.** For example, protection of employee health and safety, protection and support of the communities in which the companies are located, checks on product quality, etc.;
- **The companies' practices in advancing sustainable environmental and ecological development.** For example, how the companies prevent and reduce environmental pollution, protect water resources and energy, ensure the habitability of areas in which they are located, protect and increase biodiversity of areas in which they are located, etc.;

- **The companies' practices in advancing sustainable economic development.** For example, how the companies produce values for their clients through the companies' products and services, create better career opportunities and future development for their employees, generate high economic returns for their shareholders, etc.

VI. A company applying to disclose its annual social responsibility report should submit the following documents to the SSE:

- Public announcement documents;
- Board of directors' resolutions on the review and approval of the company's annual social responsibility report;
- Board of supervisors' resolutions on the examination and approval of the company's annual social responsibility report;
- Other documents deemed necessary by the SSE.

VII. Those companies who attach importance to the fulfillment of social responsibility and actively disclose social responsibility report will be given priority by the SSE in its consideration on the selection of the SSE Corporate Governance board, and SSE will correspondingly streamline the examination and approval process of the companies' temporary announcements.

VIII. The SSE will formulate detailed guidelines on information disclosure regarding the fulfillment of corporate social responsibility in a timely manner according to market development needs.

IX. According to [the] *Guiding Opinions on Strengthening the Regulatory Work on Listed Companies Regarding Environmental Protection and Measures on Environmental Information Disclosure (Trial Implementation)* promulgated by the State Environmental Protection Administration in February 2008, [the] Shanghai Stock Exchange Guidelines on Environmental Information Disclosure by Listed Companies has now been formulated and promulgated. Please find it in the attachment and comply with it.

Shanghai Stock Exchange May 14, 2008

## **60. Shanghai Stock Exchange Guidelines on Environmental Information Disclosure by Listed Companies (May 2008)**

Retrieved from <http://www.chinalawedu.com/news/1200/21829/21836/21957/21964/2008/5/li7617827211915800212348-0.htm>  
(in Mandarin Chinese)  
Translation by IISD

Shanghai Stock Exchange (SSE) Guidelines on Environmental Information Disclosure by Listed Companies

I. The requirements on environmental information disclosure are stipulated explicitly here according to *Measures on Environmental Information Disclosure (Trial Implementation)* (SAEP Order No. 35) and "Guiding Opinions on Strengthening the Regulatory Work on Listed Companies Regarding Environmental Protection" promulgated by the State Environmental Protection Administration, in order to meet the requirement on environmental disclosure by enterprises as stipulated in "Decision on Implementing the Scientific Concept of Development and Stepping up Environmental Protection by the State Council" (SC No. [2005] 39), guide companies to actively fulfill the social responsibility of protecting the environment, facilitate listed companies to attach importance to and improve environmental protection practices, and strengthen public scrutiny on the environmental protection practices of listed companies.

II. If a listed company experiences the following events, which are significant and relevant to environmental protection, and may have a relatively significant impact on the trading prices of the company's stocks and derivatives, the listed company should timely disclose information about such events and their possible impact on the company's operations and shareholder interest within two days since the date on which the event took place.

- (1) The company has significant investment activities such as new construction, re-construction, or expansion projects that have a significant impact on the environment;
- (2) The company is investigated by environmental protection authorities for non-compliance with environmental laws or regulations, receives major administrative or criminal penalties, or is ordered by relevant government authorities to resolve the issue within a limited period of time, cease production, relocate, or close down;
- (3) The company is involved in a major lawsuit, or its primary assets are sequestered, seized, frozen, hypothecated, or pledged, due to environmental issues;
- (4) The company is included in the list of high pollution companies by national environmental protection authorities;
- (5) Newly promulgated laws, regulations, rules, or trade policies may have a significant impact on the operations of the company;
- (6) Other significant events related to environmental protection that may have a relatively significant impact on the trading prices of the securities and derivatives of the listed company.

III. A listed company may disclose the following environmental information in its corporate annual social responsibility report or separately, based on its own needs:

- (1) The company's guiding principles on environmental protection, and annual environmental protection goals and achievements;
- (2) Total amount of annual resource consumption of the company;
- (3) Information on the company's environmental protection investment and environmental technology development;
- (4) Categories, quantities, concentrations, and destinations of pollutants discharged from the company;
- (5) Information on the construction and operations of the company's environmental protection facilities;
- (6) Information on the management and disposal of waste produced in the company's manufacturing process, and information on the recycling and reuse of waste products;
- (7) Voluntary agreements signed with environmental protection agencies to engage in activities that improve the environment;
- (8) Information on rewards received from environmental protection agencies; and
- (9) Other environmental information voluntarily disclosed by the company.

Companies engaging in industries that have a relatively significant impact on the environment, such as thermal electric power generation, steel and iron, cement, electrolytic production of aluminum, mine exploitation, etc., should disclose items (1) to (7) under the article above and emphasize explanatory information on the company's work in environmental protection investment and environmental technologies.

IV. A listed company included in the list of high pollution companies by environmental authorities should disclose the following information within two days of the day on which environmental authorities release the list:

- (1) Names of the company's pollutants, discharge methods, discharge concentrations and total amounts, and information on surpassing the quotas and total excess amount;
- (2) Information on the construction and operations of environmental protection facilities of the company;
- (3) The company's emergency preparedness plan for environmental pollution incidents;
- (4) Measures taken and future arrangements by the company to reduce the discharge of pollutants.

No listed company may refuse to disclose environmental information listed under the article above on the basis of trade secret protection.

V. Listed companies should submit the following reference documents to the SSE before they apply to disclose the environmental information described above:

- (1) Public announcement documents;
- (2) Board of directors resolution on major investment activities that have a significant impact on the environment, such as a construction project, etc. (if applicable);
- (3) (Written penalty decisions issued by environmental protection authorities, or relevant documents (if applicable);
- (4) Documents that prove the sequestration, seizure, freezing, hypothecation, or pledging of primary assets (if applicable); and
- (5) Other documentary evidence that may be applicable.

VI. For the responsibilities and obligations that a company must fulfill according to relevant environmental protection laws and regulations, which also meet the conditions stipulated in the "Accounting Standards for Enterprises" for estimated liabilities, the company should disclose the relevant amount of estimated liabilities that have already been counted and drawn in its financial report.

VII. For the information that may be voluntarily disclosed as described under Item III of the Guidelines, disclosure by the company on the SSE website is sufficient. For the information that should be disclosed as described in other provisions of the Guidelines, at the same time, the company must also disclose it in publications and on websites designated by the Securities Regulatory Commission.

VIII. For those who fail to [expediently], accurately, or completely disclose relevant environmental information according to the provisions, necessary discipline and penalties will be taken against those companies and relevant persons responsible depending on the seriousness of the violation(s).

IX. The Guidelines should come into force as of the date of promulgation.

Shanghai Stock Exchange May 14, 2008

### **61. *China Banking Association's Guidelines on Corporate Social Responsibility of Financial Institutions* (China Banking Association, January 2009)**

Retrieved from <http://www.internationalrivers.org/files/ChinaBankingAssociation.pdf>

China Banking Association's Corporate Social Responsibility Guidelines (Excerpt)

#### **Chapter 3: Social Responsibility**

**Article 11** Financial institutions should bear the responsibility for consumer education, actively carry out the financial literacy and education activities, and guide and nurture public financial awareness and risk-awareness to contribute to the increase of public property income.

**Article 12** Financial institutions should take the initiative to assume responsibility for the construction of the credit system, and actively carry out honest and trustworthy social advocacy, and guide and nurture the awareness of public credit. They should [be] devoted to promoting inter-industry coordination and cooperation, to strengthen the banking sector credit information's integration and sharing, and steadily push forward the construction of credit system in China's banking industry.

**Article 13** Financial institutions should promote people-oriented principles, pay more attention to the staff's health and safety, care for the lifestyle of staff, and improve human resource management; enhance staff training, improve the professional quality of employees and enhance employee's value of career; inspire staff enthusiasm, initiative and creativity, train financial professionals to create the healthy development of a positive, harmonious professional environment.

**Article 14** Financial institutions should support the community's economic development, facilitate the provision of financial services for the community, actively carry out a variety of community services such as financial education and publicity and helping the poor and needy, and strive to contribute to community building.

**Article 15** Financial institutions should be dedicated to social development, by charitable donations, volunteer activities, and actively participate in social welfare activities, and strive to build a harmonious society and promote social progress by playing the role of financial leverage.

#### **Chapter 4: Environmental Responsibility**

**Article 16** Financial institutions should formulate business strategies, policies and procedures, and optimize the allocation of resources to support the social, economic and environmental sustainable development, according to the national industrial policies and environmental policies, in light of international treaties, international practice and industry guidelines.

**Article 17** Financial institutions should carry out relevant research on Equator Principles as far as possible, and make a positive reference from the Equator Principles as applied to China's economic and financial development.

**Article 18** Financial institutions should set up specialized agencies or departments, responsible for environmental protection, with the necessary full-time and part-time staff.

**Article 19** Financial institutions should develop plans for resources conservation and environmental protection, to minimize the negative impacts of day-to-day operation on the environment; provide regular or irregular environmental training for staff, encourage and support employees' participation in external training, communication and cooperation of environmental protection.



**Article 20.** Financial institutions should support the client to save resources and protect the environment through credit and other financial tools, guide and encourage clients to enhance awareness of social responsibility and actively take actions; focus on environmental training for clients, in which the content should include but be not limited to specific operations of environmental impact assessment procedures, and preparation for green credit document. Financial institutions should advocate for independent on-site investigation and audit for the environmental impacts of financed projects, and make their judgments not solely based on clients' own environmental impact assessment report and data.

**Article 21** Financial institutions should actively participate in the practice of environmental protection and promotion activities, to contribute to the increase of the environmental awareness of clients and society as a whole.

## **62. Measures for Overseas Investment Management (MOFCOM, March 2009)**

Source: Procedural Law Research Institution at China University of Political Science and Law. Retrieved from [http://www.procedurallaw.cn/english/law/200904/t20090402\\_202192.html](http://www.procedurallaw.cn/english/law/200904/t20090402_202192.html)

### **Chapter 1: General Provisions**

**Article 1** To promote and regulate overseas investment, these Measures are formulated according to the Decision of the State Council on Setting Administrative Licensing for Necessarily Retained Matters Subject to Administrative Examination and Approval.

**Article 2** The term "overseas investment" as mentioned in these Measures means that an enterprise legally established in China (hereinafter referred to as the "enterprise") sets up a new non-financial enterprise overseas or acquires the right to own, control or manage an existing non-financial enterprise overseas in the way of merger or acquisition.

**Article 3** Enterprises making overseas investment shall earnestly learn and abide by the relevant domestic and foreign laws, regulations, rules and policies, and follow the principle of "mutual benefit and win-win."

**Article 4** The Ministry of Commerce shall be responsible for administering and supervising overseas investment. The competent departments of commerce of the provinces, autonomous regions, municipalities directly under the Central Government, cities under separate state planning and Xinjiang Production and Construction Corps (hereinafter referred to as the "provincial commerce departments") shall be responsible for administering and supervising the overseas investment within their respective administrative regions.

### **Chapter 2: Approval**

**Article 5** The Ministry of Commerce and the provincial commerce departments shall apply an approval system to enterprises' overseas investment. The Ministry of Commerce shall maintain an "Overseas Investment Management System" (hereinafter referred to as the "system"). An Enterprise Overseas Investment Certificate (hereinafter referred to as the "Certificate," see Annex 1 for its format) shall be issued to an approved enterprise. The Certificates shall be uniformly printed and coded by the Ministry of Commerce.

**Article 6** An enterprise making any of the following overseas investments shall submit the application materials according to Article 12 of these Measures, and obtain the approval of the Ministry of Commerce according to Article 13 of these Measures:

- (1) making overseas investment in a country which has not established a diplomatic relationship with China;
- (2) making overseas investment in a specific country or region (the list of such countries or regions shall be determined by the Ministry of Commerce in conjunction with the Ministry of Foreign Affairs and other relevant departments);
- (3) making overseas investment with the amount of investment of the Chinese party being US\$100 million or more;
- (4) making overseas investment which involves the interests of multiple countries or regions; or
- (5) setting up a special-purpose company overseas.

**Article 7** A local enterprise making any of the following overseas investments shall submit the application materials according to Article 12 of these Measures, and obtain the approval of the provincial commerce department according to Article 14 of these Measures:

- (1) making overseas investment with the amount of investment of the Chinese party being US\$10 million up to US\$100 million;
- (2) making overseas investment in the field of energy or minerals; or
- (3) making overseas investment which needs to attract capital from within China.

**Article 8** An enterprise making any overseas investment other than those prescribed in Articles 6 and 7 of these Measures shall submit an Application Form for Overseas Investment (hereinafter referred to as the "Application Form," see Annex 2 for its format), and handle the approval formalities according to Article 16 of these Measures.

**Article 9** Where the overseas investment of an enterprise falls under any of the following circumstances, the Ministry of Commerce or the provincial commerce department shall disapprove it:

- (1) endangering the state sovereignty, national security and public interests of China or violating a law or regulation of China;
- (2) damaging the relationship between China and a relevant country or region;
- (3) likely violating any international treaty concluded by China with a foreign party; or
- (4) involving any technology or goods prohibited by China from import.

The economic and technical feasibility of an overseas investment shall be the sole responsibility of the enterprise.

**Article 10** Before the Ministry of Commerce approves an overseas investment prescribed in Article 6 of these Measures, the opinion of (the economic and trade counselor's office of) the embassy or consulate of China in the foreign country or region shall be solicited. If a central enterprise is involved, the Ministry of Commerce shall be responsible for soliciting the opinion; if a local enterprise is involved, the provincial commerce department shall be responsible for soliciting the opinion.

To approve an overseas investment prescribed in paragraph 2 of Article 7 of these Measures, the provincial commerce department shall solicit the opinion of (the economic and trade counselor's office of) the embassy or consulate of China in the foreign country or region; to approve any other overseas investment, the provincial commerce department may, as the case may be, solicit the opinion of (the economic and trade counselor's office of) the embassy or consulate of China in the foreign country or region.

**Article 11** To solicit opinions, the Ministry of Commerce or the provincial commerce department shall provide (the economic and trade counselor's office of) the embassy or consulate of China in the foreign country or region with the basic information on the investment and other relevant information.

The (economic and trade counselor's office of the) embassy or consulate of China in the foreign country or region shall put forward its opinion in such respects as the security status of the host country and the impact of the investment on the bilateral political, economic and trade relationships, and make a reply within 10 working days after receiving the letter of request for opinion.

**Article 12** An enterprise making any overseas investment prescribed in Article 6 or 7 of these Measures shall submit the following materials:

- (1) an application form, which shall mainly cover the name, registered capital, amount of investment, scope of business and duration of business of the overseas enterprise, an explanation of sources of investment capital, the specific contents of the investment, the equity structure, the analysis and assessment of the investment environment, and a statement of lack of any of the circumstances prescribed in Article 9 of these Measures;
- (2) a photocopy of the business license of the enterprise;
- (3) the bylaw of the overseas enterprise and the relevant agreement or contract;
- (4) the approval or filing document issued by the relevant state department;
- (5) a Pre-report on Overseas Merger or Acquisition (see Annex 3 for its format) if it is an overseas investment in the category of merger and acquisition; and
- (6) other documents as specified by the competent department.

**Article 13** To make any overseas investment prescribed in Article 6 of these Measures, a central enterprise shall directly apply to the Ministry of Commerce, while a local enterprise shall apply to the Ministry of Commerce through the provincial commerce department at the place where the enterprise is located.

The provincial commerce department shall, within 10 work[ing] days after receiving the application (excluding the time needed for soliciting the opinion of (the economic and trade counselor's office of) the embassy or consulate of China in the foreign country or region), make a preliminary examination of the authenticity of the application materials submitted by the enterprise and whether the enterprise falls under any of the circumstances prescribed in Article 9 of these Measures, and after approving the application, submit its preliminary examination opinion and all application materials to the Ministry of Commerce.

The Ministry of Commerce shall, within five work[ing] days after receiving the application submitted by a provincial commerce department or a central enterprise, decide whether to accept it or not. If the application materials are incomplete or not prepared in the statutory form, the Ministry of Commerce shall notify the applicant within five work[ing] days of all necessary supplements and corrections at one time. If it decides to accept the application, it shall make a decision on approval or [non]-approval within 15 work[ing] days after acceptance (excluding the time needed for soliciting the opinion of (the economic and trade counselor's office of) the embassy or consulate of China in the foreign country or region).

**Article 14** To make any overseas investment prescribed in Article 7 of these Measures, an enterprise shall apply to the provincial commerce department.

The provincial commerce department shall, within five work[ing] days after receiving an application, decide whether to accept it or not. If the application materials are incomplete or not prepared in the statutory form, the provincial commerce department shall notify the applicant within five working days of all necessary supplements

and corrections at one time. If it decides to accept the application, it shall make a decision on approval or [non]-approval within 15 work[ing] days after acceptance (excluding the time needed for soliciting the opinions of (the economic and trade counselor's office of) the embassy or consulate of China in the foreign country or region).

**Article 15** Where an overseas investment prescribed in Article 6 or 7 of these Measures is approved, the Ministry of Commerce or the provincial commerce department shall make a written approval decision and issue a Certificate. In the case of [non]-approval, the Ministry of Commerce or the provincial commerce department shall notify the applicant in writing of the [non]-approval, reasons for the [non]-approval and its right to apply for administrative reconsideration or bring an administrative lawsuit according to law.

**Article 16** To make an overseas investment prescribed in Article 8 of these Measures, an enterprise shall handle the approval formalities according to the following procedure:

The head office of a central enterprise shall complete and print out an application form through the "system" as required and submit it to the Ministry of Commerce for approval. A local enterprise shall complete and print out an application form through the "system" as required and submit it to the provincial commerce department for approval.

The Ministry of Commerce or the provincial commerce department shall make an examination within three work[ing] days after receiving the application form, and, if the application form is properly completed and in the statutory form, issue a Certificate.

**Article 17** Where two or more enterprises jointly invest in the establishment of an overseas enterprise, the largest shareholder shall be responsible for handling the approval formalities after receiving the written consent of other investors. The Ministry of Commerce or the provincial commerce department at the place where the largest shareholder is located shall send a copy of the approval document to the provincial commerce department at the place where any other investor is located.

**Article 18** Before approving an overseas investment in the category of prospecting and development of mineral resources, the Ministry of Commerce or the provincial commerce department shall solicit the opinions of the relevant chamber of commerce and association in China as references for making a decision on approval or [non]-approval.

### **Chapter 3: Modification and Termination**

**Article 19** Where, after an overseas investment application is approved, any matter in the original application changes, the enterprise shall apply to the original approving organ for handling the approval formalities for modification. Where the shares of the overseas enterprise are assigned between enterprises, the assignee shall be responsible for apply for handling the modification formalities, and the Ministry of Commerce or the provincial commerce department at the place where the assignee is located shall send a copy of the relevant approval document to the provincial commerce department at the place where any other shareholder is located.

**Article 20** Where an enterprise terminates an approved overseas investment, it shall file a report with the original approving organ and surrender the Certificate. The original approving organ shall issue a letter of filing for the enterprise to handle the relevant formalities at the foreign exchange administrative department and other relevant departments. The enterprise and its affiliated overseas enterprise shall handle the deregistration formalities according to the laws of the place where the overseas enterprise is located.

The term "termination" means that an approved overseas enterprise does not exist anymore or no enterprise of China owns any right or interest such as equities in an approved overseas enterprise.

#### **Chapter IV: Code of Conduct for Overseas Investment**

**Article 21** An enterprise shall objectively assess its own conditions and capabilities and the investment environment of the host country (region), make overseas investment in an active and secure way; and, if there is any qualification requirement in any domestic or foreign law, regulation or rule, shall obtain the relevant certificate.

**Article 22** An enterprise shall name the overseas enterprise established by it according to the domestic and foreign laws, regulations and policies. An enterprise [that] fails to obtain an approval according to the relevant state provisions shall not name its overseas enterprise with such words as “China,” “State” or “National.” An enterprise may pre-register the foreign name of its overseas enterprise in the host country or region before applying for approval.

**Article 23** An enterprise shall put into effect various personal and property safety protection measures, set up an emergency warning mechanism, make an emergency response preparedness plan, and accept the guidance by the embassy or consulate of China in the foreign country or region in such respects as preventing emergencies and protecting personal safety.

Where an emergency occurs overseas, an enterprise shall [expediently] and properly dispose of it, and immediately report it to the embassy or consulate of China in the foreign or region and the competent domestic department of China.

**Article 24** An enterprise shall require the Chinese party's person in charge of the overseas enterprise to [expediently] register with (the economic and trade counselor's office of) the embassy or consulate of China in the foreign country or region in person or in a written form such as letter, fax or e-mail.

**Article 25** An enterprise shall report the business operation information and statistical data about its overseas investment to the original approving organ, and ensure the authenticity and accuracy of the reported information and data.

**Article 26** An enterprise shall, before the contract or agreement on overseas investment concluded by it with a foreign party becomes effective, obtain the relevant approval of the competent governmental department.

#### **Chapter 5: Management and Services**

**Article 27** The Ministry of Commerce shall be responsible for inspecting and guiding the overseas investment management work of the provincial commerce departments and the head offices of central enterprises.

**Article 28** The Ministry of Commerce shall set up and improve the guidance, promotion and service systems for overseas investment and reinforce public services in conjunction with the relevant departments.

The Ministry of Commerce shall publish a Guide to Overseas Investment and Cooperation Arranged by Country or Region to help enterprises understand the investment environment of the host countries (regions).

The Ministry of Commerce shall publish a Catalogue of Industries Arranged by Country for Guiding Overseas Investment to guide enterprises to make proper overseas investment in the host countries (regions).

The Ministry of Commerce shall assist enterprises in solving their difficulties and problems through the inter-governmental bilateral or multilateral economic, trade or investment cooperation mechanism.

The Ministry of Commerce shall set up an information service system for overseas investment and cooperation to provide information services in statistics, investment opportunities, investment obstacles and pre-warnings for enterprises to make overseas investment.

**Article 29** An enterprise shall, after obtaining the approval of its overseas investment, handle the foreign exchange, bank, customs, foreign affairs and other relevant formalities upon the strength of the Certificate, and enjoy the relevant policy support of the state.

**Article 30** Where an enterprise, within two years from the day of obtaining the Certificate, fails to complete the relevant legal formalities in the host country or region or fails to handle the domestic formalities at the relevant departments of China as prescribed in Article 29 of these Measures, the original approval document and the Certificate shall automatically become invalid, and the Certificate shall be surrendered to the original approving organ. If the enterprise still needs to make overseas investment, it shall handle the approval formalities again according to these Measures.

**Article 31** No Certificate shall be forged, altered, leased, lent, or transferred in any form. A Certificate [that] is modified, invalidated or cancelled shall be surrendered to the Certificate-issuing organ.

### **Chapter 6: Penalty Provisions**

**Article 32** Where an enterprise provides false application materials or fails to truthfully complete the application form, the Ministry of Commerce or the provincial commerce department shall reject or disapprove its application and give it an warning, and may reject its application for any overseas investment within one year. Where an enterprise obtains the approval for overseas investment by providing false materials or any other illicit means, the Ministry of Commerce or the provincial commerce department shall cancel the relevant document, and may reject its application for any overseas investment within three years.

**Article 33** An enterprise [that] violates these Measures shall not enjoy the relevant policy support of the state on overseas investment within three years.

**Article 34** Where any provincial commerce department fails to approve an application or perform its duties of administration and supervision according to these Measures, the Ministry of Commerce shall order it to make correction and criticize it.

**Article 35** Where any staff member of the competent commerce department fails to perform his or her duties according to these Measures or abuses his or her power, he or she shall be given an administrative sanction according to law.

### **Chapter 7: Supplementary Provisions**

**Article 36** The provincial commerce department may work out corresponding administrative measures according to these Measures.

**Article 37** The term "special-purpose company" as mentioned in these Measures refers to an overseas company directly or indirectly controlled by an enterprise for the purpose of realizing an overseas listing based on the rights and interests actually owned by it in a domestic company.

**Article 38** Where a public institution with a legal person status makes any overseas investment or an enterprise establishes any non-enterprise legal person overseas, these Measures shall apply. Where an enterprise makes investment in the Hong Kong, Macao or Taiwan region, these Measures shall analogically apply.

**Article 39** Where an overseas enterprise controlled by an enterprise makes any overseas reinvestment, within one month after completing the required legal formalities, the enterprise shall file a report with the competent commerce department. If the enterprise is a local enterprise, it shall enter the relevant information into the "system," print out a filing form (see Annex 4 for its format), affix its official seal to the form and file it with the

provincial commerce department. If the enterprise is a central enterprise, the head office of the enterprise shall enter the relevant information into the "system," print out a filing form, affix its official seal to the form and file it with the Ministry of Commerce. The filing formalities shall be deemed as completed once the enterprise submits the filing form.

**Article 40** The power to interpret these Measures shall remain with the Ministry of Commerce.

**Article 41** These Measures shall come into force on May 1, 2009. *The Provisions on the Approval of Matters Relating to the Overseas Investment in Establishing Enterprises* (Order No.16 [2004] of the Ministry of Commerce) and the Notice of the Ministry of Commerce and the Hong Kong and Macao Affairs Office of the State Council on Issuing the Provisions on the Approval of Matters Relating to Mainland Enterprises' Investment in Establishing Enterprises in the Hong Kong Special Administrative Region and the Macao Special Administrative Region (No.452 [2004] of the Ministry of Commerce) shall be abolished simultaneously. For any discrepancy between the relevant previous provisions and these Measures, these Measures shall prevail.

### **63. Guide on Sustainable Overseas Forests Management and Utilization by Chinese Enterprises (State Forestry Administration & MOFCOM, 2009)**

Retrieved from <http://www.forestry.gov.cn/portal/main/s/224/content-401396.html>

#### **Preface**

Forest resources are increasingly becoming a focus of international attention. As a responsible large developing country, China is committed to the protection, restoration and sustainable development of global forest resources. In addition to the great contributions made to protecting and developing its domestic forest resources, slowing the rapid worldwide decrease in forest area and developing forest restoration, China has vigorously carried out international cooperation and jointly promoted the sustainable development of forest resources and the mutually beneficial cooperation along with other nations.

In order to enhance the guidance and regularization of the management and utilization of overseas forest resources by Chinese enterprises, the State Forestry Administration (SFA) and Ministry of Commerce (MOFCOM) [have formulated] A Guide on Sustainable Overseas Forest Management and Utilization by Chinese Enterprises (hereinafter referred to as "Guide"), which aims to provide the industry with management criterion and self-discipline basis for the management and utilization activities of overseas forest resources by Chinese enterprises.

1. The Guide is composed of 7 sections, including objective, fundamental principles, scope of application, laws and regulations, forest management and utilization, ecological protection, community development and Appendix A. Relevant binding international conventions signed by China is listed in Appendix A.
2. The Guide was proposed by the SFA and MOFCOM, and shall be interpreted by the SFA Department of Development Planning and Finance Management as well as MOFCOM Department of Outward Investment and Economic Cooperation.
3. Drafting units of the Guide include: Forestry Project Planning and Designing Institute of the SFA Forest Product Industry Planning and Designing Academy, in collaboration with the World Wildlife Fund (WWF), Nature Conservancy (TNC) and International Union for Conservation of Nature and Natural Resources (IUCN), and Forest Trends.
4. Primary authors of the Guide include You Yingtian, Yu Ninglou, Han Xingrong, Hu Yanjie, Chen Jiawen, Chen Yong, Li Ting and Huang Kankan.

5. Experts checked and inspected on the Guide include: Zhang Yanhong, Chen Lin, Sun He, Liu Daoping, Xu Chuande, Lu De, Hu Yuanhui, Guo Yufu, Li Zhiyong, Lu Wenming, Song Weiming, Zhai Hongbo, Xue Shutian, Sun Siheng, Zhu Guangqian, Lin Xiaping, Zhu Changling, Zhang Senlin, An Yan, Chen Xiaoqian, Sun Xiufang, Li Jia, Jin Jiaman and Wang Aimin.

### **Section 1: Objectives**

[To] guide Chinese enterprises to rationally manage, utilize and protect overseas forests in order to play a positive role in [the] sustainable development of global forest resources. Further standardize the management of forest resources as well as the wood processing and utilization activities of Chinese enterprises in foreign countries, and enhance self-regulation within the industry. Promote the legitimate, sustainable management and utilization of global forest resources and related trade activities.

### **Section 2: Basic Principles and Application Scope**

#### **2.1 Basic Principles**

2.1.1 The principle of national sovereignty: Chinese enterprises shall fully respect the ownership of the host country to its forest resources and strictly observe its laws, regulations and policies when managing and utilizing the forest resources in foreign countries.

2.1.2 The principle of mutually beneficial cooperation: Chinese enterprises shall make positive efforts to promote the local economic and community development, and conduct cooperation on the basis of mutual benefit when managing and utilizing the forest resources in foreign countries.

2.1.3 The principle of integrating ecological, economic and social benefits: Chinese enterprises shall highly value the ecological benefits of forests, and ensure the unification of ecological, economic and social benefits when managing and utilizing the forest resources in foreign countries.

2.1.4 The principle of combining government guidance with industry self-regulation: Chinese enterprises shall act in accordance with the government guidance and industry regulations when managing and utilizing the forest resources in foreign countries.

2.1.5 The principle of sustainable management and utilization of forests: Chinese enterprises shall play a positive role in sustainable development of local forests, and safeguard local ecological and environmental security when managing and utilizing the forest resources in foreign countries.

2.1.6 The principle of resource saving: Chinese enterprises shall save the forest, land and energy resources to the greatest possible extent when managing and utilizing the forest resources in foreign countries.

#### **2.2 Application Scope**

The present Guide shall be applicable to the Chinese enterprises engaged in forest harvesting, wood processing and utilization, as well as other related activities in foreign countries.

### **Section 3: Laws and Regulations**

3.1 Comply with the agreements/protocols signed between China and the host country of forest resources, in addition to the relevant international conventions/agreements.

Comply with all kinds of binding agreements/protocols and other legal documents signed by China and the host country, and the international conventions and protocols acceded to by China or the host country of forest resources.



3.2 Comply with the provisions of the related laws, regulations, department rules and documents formulated by the competent authorities of the Chinese government on the overseas investment and economic cooperation of Chinese enterprises.

3.3 Comply with the laws and regulations concerned of the host country of forest resources.

3.3.1 Comply with the provisions of the laws, regulations and related documents of the host country on the management of investment, export of labour services, contracted projects and other business operations of the offshore enterprises.

3.3.2 Obtain a full understanding of and familiarize the current laws and regulations of the host country pertinent to the forest resources. The management of forests shall be in compliance with the requirements of the related forestry laws and regulations of the host country, and the corresponding responsibilities and obligations shall also be resumed and fulfilled.

3.3.3 Enhance the legal awareness of the enterprise employees. Avoid and reduce the occurrence of various kinds of illegal activities. Once an illegal act is discovered, prompt measures shall be taken to correct it according to the laws, and such an act shall be placed on record.

## **Section 4: Management and Utilization of Forest Resources**

### **4.1 Fundamental Requirements**

4.1.1 Manage and utilize the forest resources legally. Chinese enterprises participating in overseas investment concerning the management and utilization of forest resources shall file an application with the relevant departments of the host country to obtain the documents approved by the departments concerned, and manage, utilize and process the forest resources in strict accordance with the requirements such as the approved business place, area, quantity, type, operational scope, etc. No operations beyond the prescribed scope may be conducted. Any contracted project, labour service cooperation, purchasing and management of timber and wood products, etc. concerning the forest management and utilization shall meet the requirements of the relevant laws and regulations established by both sides.

4.1.2 Manage and utilize the forest resources rationally. Give full play to the wood in the logging area, reasonably conduct cross-cutting so as to increase the multipurpose timber utilization rate in an all-round way.

4.1.3 Emphasize ecosystem protection. The measures such as circumvention or slowdown shall be taken to resolve the operation affecting the ecological environment in accordance with the requirements of the laws and regulations in the host country, and the corresponding protective measures shall be taken for the forests with high conservation value.

### **4.2 Forest management**

4.2.1 Chinese enterprises obtaining the long-term utilization or leasing of forestland approved by the host country in accordance with the established procedures shall formulate the forest management and utilization program in accordance with the requirements of the laws and regulations on forest resource utilization, and submit a report to the competent national authorities or the competent authorities of the local governments of the host country for review in accordance with the established procedures.

4.2.2 In accordance with the scale of operational activities of the enterprises in the host country as well as the relevant regulations and requirements of the host country, please refer to Guide on Sustainable Overseas Silviculture by Chinese Enterprises for the forest restoration and regeneration after harvesting.

4.2.3 Possess due forest fire prevention and forest pest and disease prevention and control facilities and measures.

4.2.4 The implementation of the forest management and utilization program shall meet the requirements of the approved effective and legal documents of the management and utilization of the forest resources.

#### **4.3 Wood processing and transportation**

4.3.1 The wood processing project shall meet the regulations of the industrial policies between China and the host country, relevant investment requirements and permission, and shall be conducive to the mutually beneficial cooperation between both sides and encourage the enterprises to comprehensively conduct further processing of wood.

4.3.2 The said project shall implement the policy of reasonably utilizing the forest resources, conserving energy and protecting resources and environment so as to achieve sustainable development.

4.3.3 The wood transportation shall meet the transportation as well as inspection and quarantine standards and requirements and put on record the relevant documents.

#### **4.4 Personnel training and technical guidance**

4.4.1 Encourage enterprises to establish the training system and conduct necessary training and guidance for the personnel concerned.

4.4.2 Ensure that relevant personnel can acquire relevant operating skills such as implementing planning, harvesting, cross-cutting, skidding and hauling, regeneration, processing, etc.

4.4.3 The professional technicians shall provide the necessary technical guidance for the field operation personnel concerned.

#### **4.5 Establish the multi-stakeholder publicity and consultation system.**

4.5.1 Proclaim the main contents of the effective and legal documents of forest management and utilization to the local communities and the parties concerned.

4.5.2 Make clear the form, content, time limit, etc. in accordance with the requirements of the local governments on establishing the pre-harvesting publicity and consultation system of forest harvesting and utilization. The large-scale harvesting shall be proclaimed in the local area; the forest harvesting units (individuals) shall also establish public signs in the wood cutting areas and the surrounding traffic arteries, and proclaim the main content, operational period, etc. of legal harvesting documents approved by the departments concerned.

### **Section 5: Ecological Protection**

#### **5.1 Basic requirements**

5.1.1 Take actions that suit local circumstances, adopt scientific and rational harvesting ways and operation measures, minimize the impact of forest harvesting on biological diversity, habitats of wild fauna and flora, ecologically fragile areas, natural landscape, water quantity and quality of forest watershed, forestland soil ecosystem and the regeneration of seedlings and saplings, and ensure rapid recovery of the functions of forest ecosystem.

5.1.2 Take the corresponding measures to protect the forest, especially [in] forests with high conservation value.

## 5.2 Environmental Protection

5.2.1 When conducting felling area design, the enterprises concerned shall take full account of the undesirable effects of forest harvesting operation on surface rainfall and underground water resources, slow down soil corrosion, control soil and water erosion and avoid serious destruction to forest catchment due to harvesting.

5.2.2 In the operation process of harvesting, skidding, regeneration, road construction, etc., take rational and effective measures to minimize the damage of human activities to forestland, avoid surface destruction and soil corrosion, and maintain the natural characteristic and long-term production capacity of forest soil.

5.2.3 Take necessary measures to mitigate the noise and air pollution caused by mechanical operation during the harvesting process, immediately and appropriately cope with the production and construction waste and household garbage.

5.2.4 The location and land for wood processing plants and site construction shall comply with the regulation provisions of the home country. The solid, liquid, gas waste and noise generated by the wood processing projects shall meet the discharge standards and requirements of local environment protection departments.

5.2.5 Establish complete system on forest fire prevention and pest control, formulate and implement the measures concerned. Construct corresponding facilities for fire prevention and biological control and provide corresponding equipment in compliance with the requirements of the forest related laws and regulations on forest fire prevention and pest control operation of the host country.

## 5.3 Biodiversity conservation

5.3.1 Conserve the species and their habitats officially provided in international conventions and laws and regulations of the host country.

5.3.2 According to the requirements of related laws and regulations of the host country, identify the districts for forest management and utilization as well as the rare, threatened, endangered species of wild fauna and flora and their habitats, which shall be clearly marked on the maps concerned.

5.3.3 Formulate the corresponding measures to conserve the rare, threatened and endangered fauna and flora and their habitats within the protected zone and carry out related training and education for the staff.

5.3.4 The activities concerning the collection of wildlife specimens shall comply with the host country's regulations related to the conservation of wild fauna and flora, adopt the acquisition method of sustainable use of resources, and minimize its damage to local resources.

5.3.5 According to the requirements of relevant laws and regulations of the host country, investigate and define the types of forest harvesting areas and its surrounding typical forest ecosystem requiring protection, formulate measures on the protection of typical ecosystem and maintain its natural state.

## Section 6: Community Development

### 6.1 Respect the legitimate rights of local residents

6.1.1 The management and utilization of forest resources, in the long run, shall be favourable for the sustainable management of local forests and the sound development of the local economy so as to achieve the mutual benefits and win-win solution between trading enterprises and local residents.

6.1.2 When conducting activities related to the forest management and utilization, the enterprises concerned shall give full consideration to the interests of local residents, and take appropriate measures to prevent the said activities from directly or indirectly infringing, threatening or undermining the ownership or right of use of local residents toward legal resources.

## 6.2 Enhance community development

6.2.1 Actively engage in local public welfare undertakings, and make efforts to provide employment, training and other opportunities of social service for residents of forest regions and its surrounding areas.

6.2.2 Encourage and support community residents to participate in major decision making [regarding] forest development. Reveal to local residents, as necessary, the management and utilization contents, progress and management situation during the forest management process, so as to promote the enterprises, foster good a image and enhance credibility.

6.2.3 Respect the customs of local residents, establish the consultation mechanism with local communities and maintain friendly relationship with local residents.

6.2.4 Actively consult with local residents to designate and protect the forestland with specific cultural, ecological, economic or religious significance to local residents.

## Appendix A

The relevant international conventions, agreements and declarations:

A.1 Convention on Biological Diversity

A.2 Vienna Convention for the Protection of the Ozone Layer

A.3 Non-legally Binding Instrument on All Types of Forests

A.4 United Nations Framework Convention on Climate Change

A.5 International Convention for the Protection of New Varieties of Plants

A.6 Convention on the Conservation of Migratory Species of Wild Animals

A.7 Convention on International Trade in Endangered Species of Wild Fauna and Flora

A.8 Convention on Wetlands of International Importance Especially as Waterfowl Habitat

A.9 International Convention for the Protection of Birds

A.10 Agreement on Cooperation in the Quarantine of Plants and Their Protection against Pests and Diseases

A.11 International Tropical Timber Agreement

A.12 Rio Declaration on Environment and Development

A.13 Agreement on the Protection of Migratory Birds and Their Habitats

*Circular of the State Forestry Administration (SFA) and Ministry of Commerce (MOFCOM) on the Printing and Distribution of A Guide on Sustainable Overseas Forests Management and Utilization by Chinese Enterprises, March 2, 2009*

The forestry departments (bureaus) and administrative authorities of commerce of various provinces, autonomous regions and municipalities directly under the Central Government, forest industry (forestry) corporations of Inner Mongolia, Jilin, Heilongjiang, and Daxinganling, Forestry Administration and Bureau of Commerce of Xinjiang Production and Construction Corps:

It is hereby notified that in order to thoroughly implement the Decision of the CPC Central Committee and the State Council on Accelerating the Development of Forestry, and the related guidelines set up by the State Council on encouraging and regularizing the outward investment and cooperation of Chinese enterprises, actively implement the strategy of "Going Global," make great efforts to carry out technical and economic cooperation with foreign countries, and encourage and standardize the sustainable management and utilization of overseas forests by the Chinese enterprises, the SFA and MOFCOM have jointly developed A Guide on Sustainable Overseas forests Management and Utilization by Chinese Enterprises, in line with the Forest Law of the People's Republic of China, and other laws and regulations, in addition to the international conventions, pacts and declarations concerned. The guide is hereby printed and promulgated for execution. Should there be any problem or suggestion during its implementation, please contact the SFA (Department of Development Planning and Finance Management) and MOFCOM (Department of Outward Investment and Economic Cooperation).

Tel.: SFA Department of Development Planning and Finance Management 86-10-842 384 28 MOFCOM Department of Outward Investment and Economic Cooperation 86-10-651 971 43

Enclosed: *A Guide on Sustainable Overseas Forests Management and Utilization by the Chinese Enterprises*

Keywords: Forest, Sustainable Management, Guidelines, Circular

General Office of State Forestry Administration[,], Printed & Issued on March 31, 2009

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#### **64. Notice of the China Banking Regulatory Commission on Issuing the Guidance on Commercial Banks' Management of Reputational Risks (CBRC, August 2009)**

Retrieved from <http://www.cbrc.gov.cn/EngdocView.do?docID=20090916FE5D40D1952E796DFF87B86630B61C00>

Notice of the CBRC on Issuing the Guidance on Commercial Banks' Management of Reputational Risks

Yin Jian Fa [2009] No. 82

All departments of the China Banking Regulatory Commission (hereinafter referred to as the "CBRC"), CBRC local offices, policy banks, state-owned commercial banks, shareholding commercial banks, financial asset management companies, postal savings banks, rural credit cooperatives at the provincial level, as well as all trust companies, finance companies and financial leasing companies under the direct supervision of the CBRC,

The Guidance on Commercial Banks' Management of Reputational Risks, which has been adopted at the 87<sup>th</sup> chairman conference of the CBRC, is hereby issued for implementation in compliance.

All CBRC local offices shall forward this notice to all subsidiary branches and banking financial institutions within respective administrative region.

August 25, 2009

Guidance on Commercial Banks' Management of Reputational Risks

**Article 1** For the purpose of guiding commercial banks to carry out effective management of reputational risks, improve the comprehensive risk management system, and maintain the market confidence and financial stability, the Guidance is formulated in accordance with the Law of the People's Republic of China on Banking Supervision, the Law of the People's Republic of China on Commercial Banks, and other relevant laws and regulations.

**Article 2** The term "reputational risks" as mentioned in the Guidance refers to receiving negative comments from stakeholders with respect to a commercial bank's operation, management and other activities, or arising from external events shall be regarded as reputational risks of the bank.

"Reputational events" refer to relevant actions or events causing reputational risks of commercial banks.

"Serious reputational events" refer to the reputational events causing heavy losses to the banking sector and huge market volatility, triggering off systemic risks, or influencing the social and economic stability.

**Article 3** Commercial banks shall integrate reputational risk management into their corporate governance and comprehensive risk management system, establish and formulate reputational risk management mechanism[s], methods, related systems and requirements, take initiative to effectively prevent reputational risks and respond to the reputational events, and minimize public losses and negative impact.

**Article 4** The Boards of Directors of commercial banks shall formulate the reputational risk management policies in line with the strategic objectives of the bank that are applicable to the entire bank, establish the bank's reputational risk management system, monitor the situation and effectiveness of the bank's reputational risk management, and assume the ultimate responsibility for reputational risk management. Its main functions shall include:

1. To approve and inspect the responsibility, authority and reporting path of the senior management in respect of reputational risk management, to ensure the adoption of necessary measures to continuously and effectively monitor, control and report reputational risks, and to timely respond to the reputational events.
2. An authorized special department or team shall be responsible for the bank's reputational risk management and be equipped with reputational risk management resources commensurate with the bank's business nature, scale and complexity.
3. To clarify the responsibilities of various departments of the bank in reputational risk management, to ensure the implementation of reputational risk management system and measures.
4. To ensure that the bank formulates appropriate training programs, make[s] the staff of the bank receive relevant training[], [is] informed of the importance of reputational risk management, and take[s] initiative to safeguard the good reputation of the bank.
5. To nurture [the] reputational risk management culture of the entire bank and foster employees' awareness of reputational risks.

**Article 5** Commercial banks shall establish and formulate reputational risk management mechanisms, methods, related systems and requirements applicable to the entire bank, which include at least:

1. Investigation of reputational risks, and regular analysis of reputational risks as well as occurrence factors and conduction pathways of reputational events.
2. Classified and grading management of reputational risks, as well as clarification of management authority, responsibilities and reporting paths.
3. Emergency response to reputational risks, scenario analysis of various types of reputational risks that may occur, formulation of prediction scheme, and conducting exercises.

4. Complaints handling, monitoring and assessment, as well as the implementation of monitoring and assessment in respect of maintaining customer relationships, fulfilling the obligation of notification, solving customers' problems, ensuring the legitimate rights and interests of customers, and enhanc[ing] customer satisfaction etc.
5. Specialized management of information disclosure and media observation, timely and accurately releasing information to the public, taking initiative to listen to the public opinions, and providing assistance for ordinary news reports.
6. Analysis and judgment of public opinion, real-time attention to public opinion, and timely clarification of false information or incomplete information.
7. Rewards and punishments for internal reputational risk management.
8. Management of reputational risks, recording and storage of reputational risk management-related data and information.
9. Evaluation subsequent to reputational risk management, and timely assessment of the effectiveness of the measures in response to reputational events.

**Article 6** Commercial banks shall actively and steadily respond to reputational risk related events. The relevant measures to deal with serious reputational events shall at least include:

1. To promptly implement contingency plans and draw up countermeasures subsequent to the occurrence of serious reputational risks or actions and events that may trigger ... serious reputational risks.
2. To designate senior management personnel to establish a special team, and clarify the authorities in charge and responsibilities.
3. To release relevant information externally in accordance with the principle of timeliness, appropriateness, openness, transparency and effective management.
4. To closely follow and analyze public opinions in a real-time manner and adjust the [response] measures in a dynamic manner.
5. To report to the CBRC or its local offices within 12 hours subsequent to the occurrence of serious reputational risks.
6. To report to other relevant departments in a timely manner.
7. To submit the disposal and assessment reports promptly to the CBRC or its local offices.

**Article 7** The Banking Association shall, via industry self-regulation, rights protection, coordination and promotion, etc., maintain the good reputation of the banking sector and guide the banking sector to carry out reputational risk management.

**Article 8** The CBRC and its local offices shall determine the corresponding functional departments or posts, and shall be responsible for the monitoring and assessment of commercial banks' reputational risk management.

**Article 9** The CBRC and its local offices shall integrate the regulation of commercial banks' reputational risks into the continuous regulatory framework, supervise and inspect the effectiveness of commercial banks' reputational risk management, and take the status of commercial banks' reputational risk management as a consideration factor for market access.

**Article 10** The CBRC or its local offices are entitled to demand [that] commercial banks ... make rectification within a [certain] time limit if any problem of reputational risks is found during the supervision of the commercial

banks. Where the commercial banks fail to make rectification within [that] time limit or have serious fault in the disposal of serious reputational events, the CBRC or its local offices shall adopt appropriate regulatory measures in accordance with the law.

**Article 11** The Guidance shall apply to Chinese-funded commercial banks, joint-venture banks, and wholly foreign-owned banks established within the territory of the People's Republic of China in accordance with the law. Policy banks, financial asset management corporations, urban credit cooperatives, rural credit cooperatives, rural cooperative banks, trust companies, finance companies, financial leasing companies, auto financing companies, money brokerage companies, branches of foreign banks and other banking financial institutions shall implement reputational risk management with reference to the Guidance.

**Article 12** The CBRC is entitled to interpret and amend the Guidance.

**Article 13** The Guidance shall come into effect as of the date of promulgation.

### **65. Regulations on Safety Management of Overseas Chinese-funded Enterprises and their Employees (MOFCOM, MFA, NDRC Ministry of Public Security, SAC, Safety Authority, All-China Federation Of Industry & Commerce, August, 2010)**

Retrieved from <http://www.mofcom.gov.cn/aarticle/b/bf/201008/20100807087099.html>  
English translation purchased from Chinalawinfo

#### **Chapter 1: General Provisions**

**Article 1** These Provisions are formulated for the purpose of further strengthening the safety protection of overseas Chinese-funded enterprises, institutions and personnel under the new situations and guaranteeing the smooth implementation of the "Going Global" strategy.

**Article 2** The term "overseas Chinese-funded enterprises, institutions and personnel" refers to enterprises and institutions established overseas and personnel assigned to work abroad by outward investment and cooperation enterprises.

**Article 3** The commerce departments of all regions shall, together with the foreign affairs departments, the development and reform commissions, the public security organs, the work safety supervision and regulation agencies, and the federations of industry and commerce, be responsible for the safety management of the outward investment and cooperation enterprises within their respective regions. The state-owned assets supervision and administration departments of all regions shall provide guidance to the safety management of state-owned outward investment and cooperation enterprises in their respective regions. The federations of industry and commerce of all regions shall provide guidance to the safety management of private outward investment and cooperation enterprises in their respective regions. All embassies and consulates abroad shall provide guidance to and oversee the safety management of Chinese-funded enterprises, institutions and personnel in the countries where they are located.

**Article 4** The quality management and work safety management of contracting projects in foreign countries shall be governed by relevant provisions.

#### **Chapter 2: Overseas Safety Education and Training**

**Article 5** Outward investment and cooperation enterprises shall, under the principle of "whoever assigns shall be responsible for the safety of the assignees," provide overseas safety education and emergency preparedness training to assigned personnel before they leave the country so as to improve their safety protection awareness



and ability and increase the overall safety management capabilities. Outward investment and cooperation enterprises which enter general project contracts shall take overall responsibility for the overseas safety education and training of the subcontractors. Personnel who have not accepted safety training may not be assigned abroad.

**Article 6** Outward investment and cooperation enterprises shall make a code of conduct for personnel assigned overseas to regulate their behaviours and require them to observe local laws and regulations and respect local customs and habits.

**Article 7** The commerce departments of all regions shall, together with the foreign affairs departments, the development and reform commissions, the public security organs, the work safety supervision and regulation agencies, and the federations of industry and commerce, supervise and inspect the overseas safety education and training work of outward investment and cooperation enterprises in their respective regions. All embassies and consulates shall be responsible for supervising and inspecting the safety training work of Chinese-funded enterprises and institutions in the countries where they are located on a regular basis.

### **Chapter 3: Overseas Safety Risk Prevention and Control**

**Article 8** Outward investment and cooperation enterprises shall make safety management rules, set up an overseas safety emergency response system, and provide guidance for their enterprises or institutions established outside China to make safety protection measures and emergency response plans.

**Article 9** Outward investment and cooperation enterprises shall require their overseas Chinese-funded enterprises and institutions to seriously fulfill their social responsibilities, perform well in environmental protection, creating local jobs, and active participation in public welfare undertakings so as to create a good external environment for its outward investment and cooperation activities.

**Article 10** The Ministry of Commerce shall, together with the Ministry of Foreign Affairs, the National Development and Reform Commission, and the Ministry of Public Security, set up an overseas safety risk monitoring and pre-warning system for outward investment and cooperation activities, release overseas safety information to outward investment and cooperation enterprises on a regular basis, and provide overseas safety pre-warnings in time. The Ministry of Foreign Affairs shall be responsible for notifying Chinese embassies and consulates of safety pre-warning information.

**Article 11** The commerce departments of all regions shall, together with the foreign affairs departments, the development and reform commissions, the public security organs, and the work safety supervision and regulation agencies, shall guide, supervise, and inspect the improvement of overseas safety management systems of outward investment and cooperation enterprises in their respective regions. The state-owned assets administrations shall guide, supervise, and inspect the improvement of overseas safety management systems of state-owned outward investment and cooperation enterprises. The federations of industry and commerce shall guide the improvement of overseas safety management systems of private outward investment and cooperation enterprises, in cooperation with relevant departments.

**Article 12** All embassies and consulates shall make more efforts in collecting and evaluating the political and economic situations, ethnical and religious conflicts, social security status, and terrorist activities in the countries where they are located, give pre-warnings based on that information, and timely file it with the Ministry of Foreign Affairs, the Ministry of Commerce and other relevant authorities. They shall set up regular communication channels with relevant governmental departments of the countries where they are located to acquire safety information in a timely manner.

**Article 13** All embassies and consulates shall strengthen the frontline guidance and management of the safety work of overseas Chinese-funded enterprises, institutions, and personnel, convey the instructions and requests of the domestic authorities in time, keep them informed of the relevant safety information, and make inspections on the enterprises and project sites on a regular basis.

**Article 14** All embassies and consulates shall provide guidance for the chambers (associations) of commerce of overseas Chinese-funded enterprises to help their member enterprises formulate the safety risk prevention and control measures so as to improve their ability for preventing, controlling and handling risks.

**Article 15** When needed, the Ministry of Commerce may form an overseas safety inspection workgroup in collaboration with the Ministry of Foreign Affairs, the National Development and Reform Commission, the Ministry of Public Security, the State-owned Assets Supervision and Administration Commission, the State Administration of Work Safety, and All-China Federation of Industry and Commerce to inspect and guide the safety work of key overseas projects, eliminate the hidden safety problems in projects, check the making and implementation of relevant emergency plans, and assist the solving of existing problems. When needed, the local commerce departments may also make overseas safety inspections together with the foreign affairs departments, the development and reform commissions, the public security departments, the state-owned assets administrations, the work safety supervision and regulation agencies and the federations of industry and commerce.

#### **Chapter 4: Emergency Response to Unexpected Overseas Safety Incidents**

**Article 16** "Unexpected overseas safety incidents" refers to incidents incurred outside China which constitute threats or cause losses to life and property safety of overseas Chinese-funded enterprises, institutions, or personnel, including wars, coups d'état, terrorist attacks, kidnaps, public security crimes, natural disasters, work safety accidents, public health incidents, etc.

**Article 17** When overseas safety situations become abnormal, overseas Chinese-funded enterprises or institutions shall immediately report to the Chinese embassy or consulate in that country. After an unexpected overseas safety incident occurs, overseas Chinese-funded enterprises or institutions shall immediately report it to the Chinese embassy or consulate in that country and properly handle it under the guidance of the embassy or consulate. The procedure is as follows:

(I) The overseas Chinese-funded enterprise or institution shall properly handle the scene of the incident, provide timely relief to the injured, and report to local police.

(II) The overseas Chinese-funded enterprise or institution shall find out about and accurately report the details of the unexpected incident, including:

- Information on the entity or project involved in the incident;
- The time and location of the incident, and information on the incident site;
- A brief on the occurrence of the incident and a preliminary analysis on the cause thereof;
- Number of casualties (including missing persons) that have been or may be caused by the incident, their names and nationalities, contact information of their Chinese employers and family members, and preliminarily estimated direct economic losses;
- Measures that have been taken; and
- Other information that should be reported.

(III) The Chinese embassy or consulate in that country shall be responsible for guiding the overseas Chinese-funded enterprises and institutions on how to deal with the incident, provide necessary consular protection, and negotiate with the competent governmental departments of the country where it is located requesting them to protect the safety of overseas Chinese-funded enterprises, institutions and personnel there. The chambers (associations)

of commerce of overseas Chinese-funded enterprises shall actively assist the handling of unexpected incidents. Where an unexpected incident occurs in a country or region which has no diplomatic relations with China, the institution stationed abroad on behalf of the government shall be responsible for guidance and coordination.

(IV) The handling process of an unexpected overseas safety incident shall be timely reported to the provincial people's government at the place of registration of each outward investment and cooperation enterprise. Enterprises directly under the central government shall report the relevant situations to the State-owned Assets Supervision and Administration Commission and make a copy to the Ministry of Foreign Affairs, the Ministry of Commerce, the National Development and Reform Commission, the Ministry of Public Security, and the State Administration of Work Safety. When necessary, they can request domestic authorities to send a working team to the foreign country to provide guidance and coordination. Major unexpected overseas safety incidents shall be handled by the Ministry of Foreign Affairs together with the Ministry of Commerce, the National Development and Reform Commission, the Ministry of Public Security, the State-owned Assets Supervision and Administration Commission, the State Administration of Work Safety, All-China Federation of Industry and Commerce, etc. under the unified leadership of the inter-ministerial joint meeting for protecting the safety of overseas Chinese citizens and institutions.

(V) The local departments of commerce, foreign affairs, development and reform, public security, state-owned assets management, safety management, etc. shall, in light of the requirements of their provincial people's government, the Ministry of Commerce, the Ministry of Foreign Affairs, the National Development and Reform Commission, the Ministry of Public Security, the State-owned Assets Supervision and Administration Commission, the State Administration of Work Safety, and the Chinese embassies and consulates concerned, assist the handling of unexpected overseas safety incidents, assign personnel to join the working teams dispatched to the foreign country or region for assistance or provide assistance for the family members of the victims to go to the country or region concerned to handle the relevant issues as required by the actual situations, and organize relevant enterprises to deal with the problems arising from the incidents and claims for compensations, to handle the settlement issues, to console and compensate the bereaved families, and to arrange the departure from that country.

## **Chapter 6: Management in High-risk Countries and Regions**

**Article 18** The commerce departments of all regions shall, together with the departments of foreign affairs, development and reform, public security, state-owned assets management, safety management, etc., strictly manage local enterprises' seeking for outward investment and cooperation in high-risk countries and regions. The list of high-risk countries and regions shall be determined by the Ministry of Foreign Affairs together with the Ministry of Commerce, the Ministry of Public Security, etc., and be revised in light of the actualities.

**Article 19** The commerce departments and the development and reform departments shall be strict in their examination and approval of outward investment and cooperation activities in high-risk countries and regions and solicit opinions of the Chinese embassies and consulates in those countries.

**Article 20** The public security departments of all regions shall give notice to the persons leaving for the high-risk countries and regions.

**Article 21** Before engaging in outward investment and co-operation in a high-risk country or region, an outward investment and cooperation enterprise shall hire a specialized safety agency to make a safety risk assessment and then add details to its overseas safety protection plan based on the risk assessment report so as to minimize overseas safety risks.

**Article 22** An outward investment and cooperation enterprise that has overseas business in high-risk countries and regions shall establish comprehensive overseas safety rules to guarantee the safety of its overseas business operations. The safety rules shall cover overseas safety management provisions, overseas safety cost budgets, overseas emergency response plans, etc.

**Article 23** Enterprises [that] engage in outward investment and co-operation in high-risk countries and regions shall strictly abide by the relevant administrative provisions, get registered in a timely manner with the Chinese embassies or consults in foreign countries and regions, and accept their guidance and administration.

**Article 24** The places where Chinese-funded overseas enterprises, institutions and projects are located must be equipped with necessary safety facilities. Security guards or armed police can be employed in light of the safety situations of those places so as to increase the safety protection ability and level.

### **Chapter 6: Safety Responsibility**

**Article 25** The departments of commerce, foreign affairs, development and reform, public security, state-owned assets management, safety management, etc. of all regions, embassies and consulates, and outward investment and cooperation enterprises shall set up an overseas safety liaison system and appoint one person to take charge of overseas safety and one safety liaison to be specially responsible for the overseas safety work.

**Article 26** The departments of commerce, foreign affairs, development and reform, public security, state-owned assets management, safety management, etc. of all regions shall report the names and contact information of their persons taking charge of overseas safety and safety liaisons to the Ministry of Commerce, the Ministry of Foreign Affairs, the National Development and Reform Commission, the Ministry of Public Security, the State-owned Assets Supervision and Administration Commission, and the State Administration of Work Safety, respectively. The Chinese embassies and consulates in foreign countries and enterprises directly under the central government shall report the names and contact information of the persons taking charge of overseas safety and the safety liaison persons to the Ministry of Foreign Affairs, the Ministry of Commerce, the State-owned Assets Supervision and Administration Commission, and the State Administration of Work Safety, respectively. Local outward investment and cooperative enterprises shall report the names and contact information of their persons taking charge of overseas safety and safety liaisons to the local commerce departments. Those taking charge of overseas safety and the liaison persons shall make sure that they are available for communication round the clock.

**Article 27** Outward investment and cooperation enterprises shall set up an overseas safety responsibility system. The person in charge of an outward investment and cooperation enterprise shall be the first person responsible for its overseas safety; this person shall honestly fulfill his duties.

**Article 28** The local departments of commerce, development and reform, safety management, etc. shall provide guidance for outward investment and cooperation enterprises to bring overseas safety protection and emergency response into the evaluation of enterprises and the persons in charge of them. Where any safety incident occurs to an enterprise due to obvious oversight in safety education, risk prevention, and emergency response, the competent department shall impose a punishment and investigate the responsibilities of the liable leaders and staff members. Where a safety incident occurs due to a subjective intention, the directly liable person shall be subject to criminal responsibility.

## Chapter 7: Supplementary Provisions

**Article 29** The power to interpret these Provisions shall remain with the Ministry of Commerce, together with the Ministry of Foreign Affairs, the National Development and Reform Commission, the Ministry of Public Security, the State-owned Assets Supervision and Administration Commission, the State Administration of Work Safety, and All-China Federation of Industry and Commerce.

**Article 30** These Provisions shall come into force on the date of promulgation.

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### 66. Environmental Assessment Framework (ExIm Bank, January 2011)

Source: ExIm Bank website. Retrieved from [http://www.eximbank.gov.cn/gonggaoarticle/notice/201101/11150\\_1.html](http://www.eximbank.gov.cn/gonggaoarticle/notice/201101/11150_1.html)

*Note by the editors: Building on guidelines and best practices of World Bank and Asian Development Bank, the ExIm Bank revised its own policies for the overseas projects it supports. The document reproduced here was originally designed for domestic projects in China relating to the 'Energy Efficiency Financing III Project'. The same type of approach is also used for the financing of projects abroad in other sectors, such as infrastructure projects. This is why the document is included here.*

#### Introduction

This energy-efficiency project will lend funds to industrial enterprises and to Energy Management Companies (ESCOs) for eligible energy efficient investment projects. ExIm Bank will be repaid directly from the industrial enterprises or from the ESCO. ESCOs in turn will be paid from the energy savings realized by their specific investments with individual end-users. The project will support the government's priority energy conservation programs in the industrial and building sectors. Industrial investments will include the full spectrum of small, medium, and large scale enterprises.

The purpose of this Environmental Management Framework (hereafter, "Framework") is to provide guidance to ExIm Bank, ESCOs, ExIm Bank subproject sponsors (hereafter "Sub-borrower") and ESCO End-users (hereafter "End-user") as to their relative roles and responsibilities in meeting environmental assessment (EA) requirements for any individual subproject to be considered for financing under this World Bank project.

This Framework covers the following six EA aspects of the subproject preparation phase and the two aspects of the subproject implementation phase. Details of the requirements, responsibilities and procedures are subsequently described:

#### I. Sub-project Preparation and Construction

- a) Screening
- b) Environmental Documentation
- c) Public Consultation
- d) Public Disclosure
- e) Review and Approval of Environmental Documentation
- f) Related Conditions and Responsibilities

## II. Subproject Implementation

- a) Supervision
- b) Reporting

### **EA Procedures**

#### **I. Subproject Preparation and Construction**

Enterprise Sub-Loan ExIm Bank is responsible for subproject screening. The Sub-borrower is responsible for any EA document preparation, public consultation, and public disclosure. The Sub-borrower must demonstrate to ExIm Bank that the subproject proposed for support has: (a) met all Chinese EA requirements (procedures and documentation) and (b) the overall enterprise in which the subproject will be associated with is also in full compliance with Chinese EA requirements (if in effect at the time the enterprise was built) and Chinese pollution laws and regulations (air, water, solids, etc.).

ESCO Sub-Loan ExIm Bank is responsible for subproject screening. The ESCO is responsible for any EA document preparation, public consultation, and public disclosure. The ESCO must demonstrate to ExIm Bank that the End-user subproject proposed has: (a) met all Chinese EA requirements (procedures and documentation) and (b) the overall End-user enterprise in which the subproject will be associated is also in full compliance with Chinese EA requirements (in effect at the time the End-user enterprise was built) and Chinese pollution laws and regulations (air, water, solids, etc.).

#### **a) Screening**

ExIm Bank is responsible for subproject screening. The Sub-borrower (enterprises or ESCO) will submit the following Information Package to ExIm Bank to be placed in the subproject file:

For the proposed subproject

- Any Feasibility Study prepared
- Copy of any Chinese EIA or EIA Table approval letter from Chinese environmental authorities, or letter indicating no EIA document required
- Copy of any Chinese EIA or EIA table documentation
- Record of any public consultation
- Details of any public disclosure of Chinese EA documents

For the Overall Enterprise or End-User

- Copies of operating permit, license, and all necessary government environmental approvals
- Copies of all environmental discharge permits (air, water land etc.)
- Copy of any EIA approval letter
- Construction start date

ExIm Bank will then complete the Screening Form presented in Annex A and place it in the subproject file. If the overall Enterprise/End-User: (a) engages in any of the prohibited activities listed, (b) is not legally authorized to conduct business, (c) does not meet Chinese environmental standards, or (d) has outstanding environmental liabilities, the subproject would not be eligible for support.

Generally, only subprojects with modest or no environmental issues which will be installed in legitimate Enterprises/End-Users whose operations meet all Chinese environmental requirements will be considered eligible for support.

**b) Environmental Documentation**

Chinese environmental screening procedures differ from World Bank Criteria presented in Annex A. Comparison of the two systems is presented in the Table below. It should be noted that the most likely situations are highlighted in yellow (i.e., Chinese EIA, likely a Category A). Nonetheless, since the two systems are different, it is possible for a subproject to require an EIA under the Chinese system, yet be assigned Category B under the World Bank system:

| WORLD BANK SCREENING RESULTS | CHINESE SCREENING RESULTS |           |                    |
|------------------------------|---------------------------|-----------|--------------------|
|                              | EIA                       | EIA Table | No EIA Requirement |
| A                            | X                         | X         |                    |
| B                            | X                         | X         | X                  |
| C                            |                           |           | X                  |

...

Since this project will not include Category A subprojects and Category C subprojects have no environmental assessment requirements, only the following three possibilities will be considered in the Framework:

Category B/Chinese EIA

Category B/Chinese EIA Table

Category B/No Chinese EIA Requirement

The only World Bank EA document requirement for a Category B subproject is an Environmental Management Plan (EMP). The required EMP format is presented in Annex B.

The Sub-borrower (enterprise or ESCO) should utilize the approved Chinese EA documentation (either EIA or EIA Table) in preparing the EMP[1]. If there was no Chinese EIA Requirement, the Sub-borrower (enterprise or ESCO) should consult with ExIm Bank to determine the issues ExIm Bank identified in "Screening" and prepare the EMP based upon those issues.

**c) Applicable Environmental Standards**

Subprojects requiring an EMP will include mitigating actions to assure compliance with environmental standards of performance. If both Chinese and World Bank standards are available for a particular mitigating measure, the stricter of the two standards would apply. For example, if the environmental issue of concern is "noise" and the World Bank noise standard is stricter than the Chinese standard, it is expected that the mitigating measure selected would be effective in meeting the stricter World Bank standard. World Bank environmental standards are those of the World Bank Group Environmental, Health, and Safety Guidelines (known as the "EHS Guidelines"). The EMP Mitigation section (see Annex B) includes a column to indicate the applicable standard appropriate to the particular mitigating measure: either Chinese standard or World Bank Standard

(see: [www.ifc.org/ifcext/sustainability.nsf/content/EHSGuidelines](http://www.ifc.org/ifcext/sustainability.nsf/content/EHSGuidelines)).

**d) Public Consultation**

Public consultation is the responsibility of the Sub-borrower (Enterprise or ESCO). Projects assigned World Bank Category B are required to conduct a public consultation with locally affected groups. It may be performed either by: (i) a questionnaire survey, (ii) individual interviews, or (iii) a group meeting. Requirements for each of the three

possibilities are presented below.

#### **Category B/Chinese EIA**

Chinese EIA regulations include public consultation for any project that requires Chinese EIA. The Sub-borrower would include this public consultation documentation as part of the Information Package provided to ExIm Bank (see "Screening" above). ExIm Bank should review the public consultation documentation and determine if all items required in a World Bank Public Consultation (see "Annex B: EMP FORMAT --Public Consultation Documentation") have been documented properly.

If the public consultation documentation includes all the items indicated in Annex B, ExIm Bank should inform the Sub-borrower there are no further consultation requirements.

If the public consultation documentation does not include all the items indicated in Annex B, ExIm Bank should inform the Sub-borrower that another public consultation is required, and that it must be carefully documented with all the information described in Annex B (EMP FORMAT --Public Consultation Documentation)

#### **Category B/Chinese EIA Table**

Chinese EIA regulations do not include public consultation for projects that require an EIA Table. However, World Bank environmental assessment procedures require public consultation. ExIm Bank should inform the Sub-borrower that a public consultation is required, and that it must be carefully documented with all the information described in Annex B (EMP FORMAT --Public Consultation Documentation)

#### **Category B/No Chinese EIA Requirement**

Chinese EIA regulations do not include public consultation for projects that do not require any EIA document. However, World Bank environmental assessment procedures require public consultation. ExIm Bank should inform the Sub-borrower that a public consultation is required, and that it must be carefully documented with all the information described in Annex B (EMP FORMAT—Public Consultation Documentation)

Any significant issues identified in the public consultation should be included in the EMP mitigation and monitoring plans. ExIm Bank must verify that this is done.

#### **e) Public Disclosure**

After a draft EMP is completed (including the Public Consultation), the Sub-borrower should disclose the EMP in a public place near the site of the proposed subproject and/or on the Sub-borrowers' website or the ESCO/End-Users' website).

#### **f) Review and Approval of Environmental Documentation**

After the draft EMP has been disclosed to the public, the Sub-borrower (enterprise or ESCO) should submit the following information to the EXIM BANK:

- Copy of the EMP (including Public Consultation Documentation)
- Details of the public disclosure
- Date
- Media/Location (newspaper, TV, radio, internet, or public places)

ExIm Bank should review this information to determine if it is consistent with the information included in any Chinese EA documentation, reflects any significant issues raised at the public consultation, and provides all necessary information as presented in Annex B. If satisfied, ExIm Bank should then inform the Sub-borrower that environmental aspects of the subproject have been satisfied.



### g) Related Conditions and Responsibilities

**Sub-Borrower Sub-Loan:** The agreement between the Sub-borrower (enterprise or ESCO) and ExIm Bank must include a condition obligating the Sub-borrower to implement the actions and procedures specified in the EMP.

## II. Subproject Implementation

### a) Supervision

During the investment subproject tender, it is the responsibility of the Sub-borrower (enterprise or ESCO) to assure that the requirements put forward in the EMP have been included in all tender documents. EXIM has the right to check tender documents to verify this condition. Satisfying these conditions is one prerequisite to winning the bid.

During project implementation, the Sub-borrower (enterprise or ESCO) is responsible for insuring that the actions and procedures specified in the EMP are being faithfully implemented. EXIM BANK will have the right to visit projects and verify that the Sub-borrower/Contractors are meeting their obligations.

ExIm Bank will be responsible for supervision of Sub-borrower (enterprise or ESCO) performance. As part of this supervision ExIm Bank will check selected documentation to verify that bid documents and construction/operation contracts include the obligations of EMP implementation. ExIm Bank will also check Sub-borrower supervision reports (see below) to verify if the Sub-borrower (enterprise or ESCO) examined contractor EMP implementation during their project supervision visits.

### b) Reporting

**Enterprise Sub-Loan:** The Sub-borrower, as part of their normal reporting to the ExIm Bank will include a section on environment. In this section, the Sub-borrower will briefly indicate implementation details of the EMP, any environmentally significant events and measures take to control them.

**ESCO Sub-Loan:** The ESCOs, as part of their normal reporting to ExIm Bank will include a summary of environmental performance of each of their End-User subprojects, noting in particular any End-User subproject having significant environmental management issues and the manner in which they were resolved.

ExIm Bank, as part of [its] normal reporting to the World Bank, will include a summary of Sub-borrowers' (Enterprise and ESCOs) performance. The report should indicate the degree to which EMP requirements were included in contract agreements, and bid documents and as appropriate any particular subprojects where environmental management issues were significant and the manner in which they were resolved.

**ANNEX A: SUBPROJECT SCREENING FORM**

## OVERALL ENTERPRISE

Criteria N/A YES NO Comments

**Does the enterprise engage in any of the following activities?**

- Production or trade in any product or activity deemed illegal under Chinese laws or regulations or international conventions and agreements, or subject to international bans, such as pharmaceuticals, pesticides/herbicides, ozone depleting substances, PCB's, wildlife or products regulated under CITES
- Production or trade in weapons and munitions.
- Production or trade in alcoholic beverages (excluding beer and wine)
- Production or trade in tobacco
- Gambling, casinos and equivalent enterprises
- Production or trade in radioactive materials (except purchase of medical equipment, instrumentation or any equipment where the radioactive source is trivial and/or adequately shielded.
- Production or trade in unbonded asbestos fibers. This does not apply to purchase and use of bonded asbestos cement sheeting where the asbestos content is less than 20 per cent
- Drift net fishing in the marine environment using nets in excess of 2.5 kilometers in length.
- Production or activities involving harmful or exploitative forms of forced labour/harmful child labour.
- Commercial logging operations for use in primary tropical moist forest.
- Production or trade in wood or other forestry products other than from sustainably managed forests.

**If YES, subproject is eliminated from further consideration**

Does the enterprise have a valid operating permit, valid license, and all necessary government approvals to conduct business? **If NO, the End-user must obtain all required licenses/permits/approvals etc. prior to sub-project approval.**

Does the enterprise meet all Chinese environmental regulations regarding air emissions, water discharges, and solid waste management consistent with EHS Guidelines? [2] **If NO, the End-user must take corrective measures to meet Chinese regulations prior to sub- project approval**

Does the enterprise have any outstanding environmental or social liabilities (fees, fines, penalties, pending legal actions/decisions)

**If YES, the enterprise must take corrective measures to remove these liabilities prior to subproject approval**

**PROPOSED SUBPROJECT**

Criteria N/A YES NO Comments

Does the subproject have the potential to adversely affect sites with archaeological, paleontological, historical, religious, or unique natural values? [3] **If YES, subproject is excluded.**

Does the subproject have the potential to significantly convert or degrade natural habitats? **If YES, subproject is excluded.**

Will the subproject likely have significant negative environmental impacts that are sensitive, unique, or are difficult and expensive to control? **If YES, assign Category A.**

Will the subproject likely have significant impacts to the human or natural environment that extend well beyond the enterprise boundaries, and are long-lasting? **If YES, assign Category A**

### Issues of Special Concern

Will the subproject involve:

- Presence of asbestos during demolition of structures or proposed use of asbestos as an insulating material?
- Hazardous wastes (toxic, flammable, explosive etc.) or waste materials banned or prohibited from reuse (e.g. PCBs) if generated during rehabilitation and operation of subprojects?
- CFL light bulb wastes (mercury, PCBs etc.)?
- Use of materials violating Chinese obligations under international treaties, agreements, or protocols (e.g. Montreal Protocol regarding ozone depleting substances commonly used in the manufacture of insulating materials for buildings or district heating pre-insulated pipes) If YES, assign Category A or B depending on the magnitude of the issue and the specific details of environmental management (risk, difficulty, expense, level of skills needed for mitigation etc.)?

Will the subproject likely have negative impacts to the human or natural environment that are modest, confined to a small region and are temporary or short-lived and these impacts are easy and inexpensive to control? **If YES, assign Category B**

Will the subproject likely have no minor or no negative impacts to the human or natural environment? **If YES, assign Category C**

### ANNEX B: EMP FORMAT

#### Subproject Description

Present a brief description of the Subproject. Include the nature of the investment, the location, and any characteristics of the area that are of particular interest, e.g. near a protected area, area of cultural, historical, religious interest etc. Also, very briefly describe the general land use characteristics (farming, small industry etc.), and the location(s) of the nearest population centres. Provide a brief summary of the major Subproject related environmental issues, how will they be managed, who will manage them and what, if any, are the environmental risks.

#### MITIGATION PLAN

- Issue
- Mitigating Measure Applicable
- Standard Estimated
- Mitigation
- Cost
- Responsibility
- Start Date
- End Date
- Chinese World Bank\*
- CONSTRUCTION PHASE
- OPERATION PHASE

\*see "[www.ifc.org/ifcext/sustainability.nsf/content/EHSGuidelines](http://www.ifc.org/ifcext/sustainability.nsf/content/EHSGuidelines)"

### MONITORING PLAN

- What parameter is to be measured?
- Where is the parameter to be measured?
- How is the parameter to be monitored (equipment to be used)?
- When[?]
- Frequency of monitoring or continuous monitoring
- Cost
- Cost of equipment or Contractor charges
- Responsibility
- Start Date
- End Date

### CONSTRUCTION PHASE

### OPERATION PHASE

### INSTITUTIONAL ARRANGEMENTS

A narrative discussion detailing:

- Institutional responsibilities and procedures for mitigation and monitoring and how they are linked for environmental management
- Environmental information flow (reporting—from who and to who and how often)
- Decision-making chain of command for environmental management (to take action, to authorize expenditures, to shut down, etc.)

### PUBLIC CONSULTATION DOCUMENTATION

- Manner in which Public Consultation was announced
- Media (newspaper, TV, radio, internet) or public places
- Announcement date(s)
- Copy of announcement (if available)
- Date(s) of Consultation
- Location(s) of Consultation
- List of persons invited/contacted
- List of persons attending/participating
- Manner of Consultation
- Public meeting
- Questionnaire
- Survey
- Other
- Program/Agenda
- Minutes (comments, questions, issues raised and response by End-user)
- Decisions reached, actions agreed upon (schedules, responsibilities)

[1] Generic EMP associated with the particular End-user subproject will be prepared for ESCO use.

[2] EXIM Bank may wish to verify this by visiting the enterprise, checking with local environment authorities, surveying the enterprise facilities and reviewing the monitoring program

[3] If the subproject involves excavation activities, the EMP should include “chance find” procedures in accordance with Chinese regulations.

## 67. Resettlement Policy Framework (ExIm Bank, January 2011)

Source: ExIm Bank website. Retrieved from [http://www.eximbank.gov.cn/gonggaoarticle/notice/201101/11152\\_1.html](http://www.eximbank.gov.cn/gonggaoarticle/notice/201101/11152_1.html)

*Note by the editors: Building on guidelines and best practices of World Bank and Asian Development Bank, the ExIm Bank revised its own policies for the overseas projects it supports. The document reproduced here was originally designed for domestic projects in China relating to the ‘Energy Efficiency Financing III Project’. The same type of approach is also used for the financing of projects abroad in other sectors, such as infrastructure projects. This is why the document is included here.*

### Introduction

1. This document constitutes the Policy Framework for Compensation, Resettlement and Rehabilitation of Displaced Persons (RPF) for Energy Efficiency Financing III Project in China. The EXIM Bank – the only Participating Financial Intermediary (PFI) of the Project has agreed to apply World Bank environmental and social safeguard policies in the design and implementation of this project, including OP 4.12, “Involuntary Resettlement.” For this project, design and scheduling considerations make it impossible to determine the extent of resettlement planning requirements at appraisal. The RPF establishes principles and procedures to be followed if subsequent stages of project design or implementation are to cause land acquisition or other involuntary restrictions on access to land or other resources. In such instances, the RPF requires that a Resettlement Plan (RP) [be] prepared for World Bank review and approval. The RP ensures that any such potential impacts are minimized, and that any persons affected by such impacts are provided ample opportunity and compensation, through provision of compensation and other forms of assistance, to improve or at least restore their incomes and living standards.

### Project Description

2. The Project includes two components; one is energy conservation investment lending through PFI; and the other is technical assistance to PFI. The energy conservation investment lending component will provide finance to industrial enterprises of all sizes in both energy-intensive industrial sub-sectors and building sector and Energy Service Companies (ESCOs) with subprojects in the same sectors. The major types of energy efficiency subprojects eligible for financing under the project include: (a) replacement of inefficient industrial technologies with energy-saving technologies such as more efficient industrial boilers, kilns, and heat exchange systems; (b) recovery and utilization of by-product gas, waste heat and pressure; (c) installation of highly efficient mechanical and electrical equipment, including motors, pumps, heating and ventilation equipment; (d) industrial system optimization to reduce energy use; (e) building energy efficiency (residential, commercial, and government buildings), including lighting, HVAC (heating, ventilation, air conditioning, and cooling) systems, energy management, building envelope insulation (roof, walls, windows, and doors), and renewable energy applications in buildings (roof-top solar PV, solar water heaters, and heat pump); and (f) other projects agreed by the Bank and the GOC.

3. Most of these subprojects will be located within the existing premises of industrial facilities or buildings and will not require additional land acquisition. Only in some waste heat recovery subprojects, potential land acquisition or resettlement might be involved for construction of related heating supply facilities outside the existing plants. To ensure that implementation of land acquisition and resettlement for those subprojects will follow relevant national laws and regulations and comply with the safeguard policies of the World Bank, separate resettlement action plans need to be developed by following the policies and procedures set out in this policy framework.

### **Policy Objectives and Key Definitions**

4. OP 4.12 provides essential guidance on objectives and principles that are applicable in projects generating land acquisition and resettlement-related impacts. Key objectives and definitions are as follows:

5. Every reasonable effort will be made to avoid or minimize the need for land acquisition, and to minimize all resettlement-related adverse impacts. If land acquisition and associated adverse impacts cannot be avoided, the principle objective of the RPF is to ensure that all persons subjected to adverse impacts (“displaced persons” as defined below) are compensated at replacement cost (as defined below) for lost land and other assets and otherwise provided with any rehabilitation measures or other forms of assistance necessary to provide them with sufficient opportunity to improve, or at least restore, their incomes and living standards.

6. “Displaced persons” refers to all of the people who, on account of the activities listed above, would have their (1) standard of living adversely affected; or (2) right, title, interest in any house, land (including premises, agricultural and grazing land) or any other fixed or movable asset acquired or possessed temporarily or permanently [adversely affected]; (3) access to productive assets adversely affected, temporarily or permanently; or (4) business, occupation, work or place of residence or habitat adversely affected; and “displaced person” means any of the displaced persons.

7. “Replacement cost” is the method of valuation of assets which determines the amount of compensation sufficient to replace lost assets, including any necessary transaction costs. Compensation at replacement cost is defined as follows: For agricultural land, it is the pre-project or pre-displacement, whichever is higher, market value of land of equal productive potential or use located in the vicinity of the affected land, plus the cost of preparing the land to levels similar to those of the affected land, plus the cost of any registration and transfer taxes. For land in urban areas, it is the pre-displacement market value of land of equal size and use, with similar or improved public infrastructure facilities and services and located in the vicinity of the affected land, plus the cost of any registration and transfer taxes. For houses and other structures, it is the market cost of the materials to build a replacement structure with an area and quality similar to or better than that of the affected structure, or to repair a partially affected structure, plus the cost of transporting building materials to the construction site, plus the cost of any labour and contractors’ fees, plus the cost of any registration and transfer taxes. In determining the replacement cost, depreciation of the asset and the value of salvage materials are not taken into account, nor is the value of benefits to be derived from the project deducted from the valuation of an affected asset. Where domestic law does not meet the standard of compensation at full replacement cost, compensation under domestic law is supplemented by additional measures so as to meet the replacement cost standard. Such additional assistance is distinct from resettlement measures to be provided under other clauses in OP 4.12, Para. 6.

“Land acquisition” is the process whereby a person involuntarily loses ownership, use of, or access to, land as a result of the project. Land acquisition can lead to a range of associated impacts, including loss of residence or other fixed assets (fences, wells, tombs, or other structures or improvements that are attached to the land).

“Rehabilitation” is the process by which displaced persons are provided sufficient opportunity to restore productivity, incomes and living standards. Compensation for assets often is not sufficient to achieve full rehabilitation.

“Cut-off Date” is the date prior to which the ownership or use establishes eligibility as displaced persons for compensation or other assistance. The cut-off date is established in the RP. It normally coincides with the date of the census of affected persons, or the date of public notification regarding the specific civil works that would cause displacement. Persons coming into the project area after the cut-off date are not eligible for compensation or other assistance.

### **Key Principles**

8. World Bank’s OP 4.12 establishes several key principles to be followed in resettlement planning and implementation. Of particular relevance for this RPF are the following:

- a) Wherever possible, project designs and RPs should be conceived as development opportunities, so that displaced persons may benefit from the services and facilities created for, or by, project activities.
- b) All displaced persons are entitled to compensation for lost assets, or to alternative but equivalent forms of assistance in lieu of compensation; lack of legal rights to the assets lost will not bar displaced persons from entitlement to such compensation or alternative forms of assistance.
- c) Compensation rates as established in a RP refer to amounts to be paid in full to the individual or collective owner of the lost asset, without depreciation or deduction for taxes, fees or any other purpose.
- d) When cultivated land is acquired, effort should be made to provide land-for-land replacement.
- e) Replacement houseplots, sites for relocating businesses, or replacement agricultural land should be of equivalent use value to the land that was lost.
- f) The resettlement transition period should be minimized. Compensation for assets should be paid prior to the time of impact, so that new houses can be constructed, fixed assets can be removed or replaced, and other necessary mitigation measures can be undertaken prior to actual displacement.
- g) Displaced persons are to receive support (direct assistance or allowances) to meet moving expenses or for temporary subsistence until they can resume productive activities.
- h) Displaced persons should be consulted during the process of RP preparation, so that their preferences regarding possible resettlement arrangements are solicited and considered; RPs are publicly disclosed in a manner accessible to displaced persons.
- i) The previous level of community services and access to resources will be maintained or improved after resettlement.
- j) Responsibility must be clearly established for meeting all costs associated with land acquisition and resettlement, and for ensuring that sufficient funds are available as they become needed.
- k) Clear institutional arrangements must be established to ensure effective and timely implementation of all resettlement and rehabilitation measures.
- l) Adequate arrangements for effective monitoring will be made on implementation of all resettlement measures.
- m) Methods by which displaced persons can pursue grievances will be established, and information about grievance procedures will be provided to displaced persons.

### **Chinese Legal and Regulatory Framework**

9. For any land acquisition and resettlement activities in China, they will follow a set of national laws and regulations, which include: (1) *Land Administration Law of the People's Republic of China* (issued in 1986 and amended in 1998); (2) *Circular of the Ministry of Land and Resources Concerning the Issuance of the Guiding Opinions on Improving the System of Compensation for Requisition of Land* (Circular No. 238, issued by MLR in 2004), and (3) provincial and local implementation regulations. These laws and regulations form the legal basis for providing compensation and rehabilitation to those affected by land acquisition and resettlement activities. The followings are key provisions of *Land Administration Law and Circular No. 238*.

#### **9.1 Key Provisions of the Land Administration Law**

##### **Article 2**

The state may, out of necessity of public interest, requisition land collectively owned in accordance with law.

##### **Article 46**

Where land is to be requisitioned by the State, the requisition shall, after approval is obtained through legal procedure, be announced by people's governments at or above the county level, which shall help execute the requisition.

Units and individuals that own or have the right to the use of the land under requisition shall, within the time limit fixed in the announcement, register for compensation with the land administration department of the local people's government by presenting their certificates of land ownership or land-use right.

##### **Article 47**

Land requisitioned shall be compensated for on the basis of its original purpose of use.

Compensation for requisitioned cultivated land shall include compensation for land, resettlement subsidies and attachments and young crops on the requisitioned land. Compensation for requisition of cultivated land shall be six to ten times the average annual output value of the requisitioned land for three years preceding such requisition.

Resettlement subsidies for requisition of cultivated land shall be calculated according to the agricultural population needing to be resettled. The agricultural population needing to be resettled shall be calculated by dividing the amount of requisitioned cultivated land by the average amount of the original cultivated land per person of the unit the land of which is requisitioned.

The highest resettlement subsidies to be divided among members of the agricultural population needing resettlement shall not exceed 15 times its average annual output value for the three years preceding such requisition.

Standards of land compensation and resettlement subsidies for requisition of other types of land shall be prescribed by provinces, autonomous regions and municipalities directly under the Central Government with reference to the standards of compensation and resettlement subsidies for requisition of cultivated land.

Standards for compensation for attachments and young crops on the requisitioned land shall be prescribed by provinces, autonomous regions and municipalities directly under the Central Government.

For requisition of vegetable plots in city suburbs, the land users shall pay towards a development and construction fund for new vegetable plots in accordance with the relevant regulations of the State.



If land compensation and resettlement subsidies paid in accordance with the provisions of the second paragraph of this Article are still insufficient to help the peasants needing resettlement to maintain their original living standards, the resettlement subsidies may be increased upon approval by people's governments of provinces, autonomous regions and municipalities directly under the Central Government. However, the total land compensation and resettlement subsidies shall not exceed 30 times the average annual output value of the requisitioned land for the three years preceding such requisition.

#### Article 48

Once a plan for compensation and resettlement subsidies for requisitioned land is decided on, the local people's government concerned shall make it known to the general public and solicit comments and suggestions from the collective economic organizations, the land of which is requisitioned, and the peasants.

#### Article 49

The rural collective economic organization, the land of which is requisitioned, shall accept supervision by making known to its members the income and expenses of the compensation received for land requisition.

The compensation and other charges paid to the unit for its land requisitioned is forbidden to be embezzled or misappropriated.

#### Article 57

Where land owned by the State or by peasant collectives needs to be used temporarily for construction of projects or for geologic prospecting, the matter shall be subject to approval by the land administration departments of people's governments at or above the county level. However, if the land to be temporarily used is located in the area covered by urban planning, the matter shall be subject to agreement by the urban planning administration department concerned before it is submitted for approval. The land user shall, depending on who owns the land and who has the land-use right, enter into a contract for the temporary use of the land with the land administration department concerned, or the rural collective economic organization, or the villagers committee and pay compensation for it in accordance with the provisions of the contract.

The temporary land user shall use the land for purposes stipulated in the contract for temporary use of the land and may not build permanent structures on it.

Generally, the period for temporary use of land shall not exceed two years.

### 9.2 Key Provisions in the Circular No.238

(1) **The Formulation of the Unified Standards of Annual Output Value.** The departments of land and resources at the provincial level shall, in conjunction with other departments concerned, work out the unified minimum standards for annual output value, which shall be announced and executed after the examination and approval by the people's governments at the provincial level. Factors such as types and quality of arable land requisitioned, peasants' input, prices of primary products and the categories of farmland shall take into account when deciding the value of average annual output.

(2) **The Determination of the Unified Multiple of Annual Output Value.** The unified multiple of the value of average annual output for calculating land compensation and resettlement subsidies shall comply with the principle of non-decrease of the standards of living of the peasants whose arable land has been requisitioned and shall be decided within the limits prescribed by laws and regulations; compensation for requisitioned land calculated with reference to the prescribed multiple of the value of average annual output shall increase the multiple upon approval of the people's governments at the provincial level if it is unable to maintain

the original living standards of the peasants whose land has been requisitioned and still insufficient to pay social security expenses for peasants who have lost land due to requisition; the total land compensation and resettlement subsidies shall be 30 times the value of the average annual output of arable land, or shall be subsidized by a proportion of proceeds from the sale of State-owned land use rights under the overall planning of a local people's government if they are still insufficient to maintain the original living standards of the peasants whose land has been requisitioned. Compensation for arable land that is authorized to be requisitioned shall be implemented in compliance with the maximum compensation standards announced by the local people's government.

(3) **The Formulation of the Comprehensive Prices of Farmland in Resettlement Areas.** In the areas where conditions permit, provincial-level departments of land and resources may make comprehensive land prices in counties (or cities) within provincial boundaries together with the administrative departments concerned, which shall go into effect upon approval and promulgation by the people's governments at the provincial level and shall be applied to compensation for land requisitioned. In calculating the comprehensive prices of farmland, the categories and rates of arable land, its production value, location, per capita quantity as well as demand and supply or the local economic development levels and the minimum standards of living should be given full consideration.

(4) **The Allocation of Compensation for Land.** In accordance with the principle of distributing land compensation funds mainly among peasants whose land has been requisitioned, land compensation funds shall be appropriately allocated within rural collective economic organizations. The people's governments at the provincial level shall guide detailed ways of allocation. In the areas where land is expropriated and rural collective economic organizations are dissolved, all compensation for land shall be applied for the restoration of agricultural production and livelihood of the peasants whose land has been requisitioned.

(5) **Rehabilitation by Agricultural Production.** During requisitioning of peasants' collective land beyond urban planning areas, first priority shall be given to providing peasants with necessary cultivated land for continuity of agricultural production by utilizing the rural collective land reserves, the contracted land returned voluntarily by the contracting rural households or the newly added arable land after land circulation and land consolidation.

(6) **Rehabilitation by Reemployment.** Favourable conditions shall be created to provide free technical training and assign corresponding posts to peasants whose land has been requisitioned. Under equal conditions, the land users shall give priority to creating employment opportunities for peasants whose land has been requisitioned. During requisitioning of peasants' collective land within urban planning areas, the peasants losing their arable land due to land acquisition shall be incorporated into urban employment systems and a social security system shall also be established.

(7) **Rehabilitation by Dividends.** Regarding land with long-term stable earnings to be used in any projects, under the premise of rural households' willingness, the rural collective economic organizations, the land of which is requisitioned, shall regard land compensation as stocks or converge the land-use right of the land approved for construction purposes into stocks through consultation with the land users. The rural collective economic organizations and rural households shall receive dividends by means of preference stocks based on the contracted conditions.

(8) **Rehabilitation by Resettlement.** In the areas where peasants losing land due to land acquisition are not provided with basic production and living conditions, the local government shall organize their resettlement into other areas on the basis of fully soliciting opinions from the rural collective economic organizations and rural households whose land has been requisitioned.

### Subproject screening

10. Due to the nature of the subprojects, only a few subprojects may involve construction of certain facilities extending beyond the boundary of the existing plants or building on new locations. In these cases potential land acquisition and resettlement might be involved. For those subprojects, a land acquisition screening will be carried out by a domestic social safeguard specialist engaged by EXIM Bank in order to determine scale of land acquisition and resettlement impacts for those subprojects. The land acquisition screening will include basic information on (1) amount of land acquisition required for the project; (2) amount of buildings to be demolished; (3) number of households or persons to be relocated; and (4) number of people to be affected by land acquisition. Based on such screening, the types of resettlement plans instrument will be suggested for the concerned subprojects. In addition, for the connection of plants, if the land areas were recently acquired, a due diligence review will be required to confirm whether the land acquisition had followed relevant national laws and regulations with no remaining problems. Such land acquisition screening will be reviewed and confirmed by the Bank before preparation of safeguard documents by the sub-borrower could begin.

11. The land acquisition screening determines whether a full RP or an “abbreviated” RP will be required. When the number of persons affected exceeds 200, a full RP is necessary. Where impacts on all displaced persons are relatively minor, or fewer than 200 people are affected, an abbreviated RP may be prepared. Impacts are considered “minor” if the affected people are not physically displaced and less than 10 per cent of their productive assets are lost.

The Resettlement Plan should include:

- a) description of the activity causing land acquisition;
- b) range and scope of potential adverse impacts;
- c) socioeconomic survey and baseline census survey information;
- d) review of relevant laws and regulations relating to land acquisition and resettlement;
- e) specific compensation rates (or alternative measures) for all categories of affected assets;
- f) other measures, if any, necessary to provide opportunities for economic rehabilitation of displaced persons;
- g) eligibility criteria for compensation and all other forms of assistance;
- h) relocation arrangements, if necessary, including transitional support;
- i) site selection and site preparation, if necessary;
- j) restoration or replacement of community infrastructure and services;
- k) organizational arrangements for implementation;
- l) consultation and disclosure arrangements;
- m) resettlement implementation schedule;
- n) costs and budget;
- o) monitoring arrangements;
- p) grievance procedures;
- q) summary entitlements matrix

13. If an abbreviated RP is to be prepared, it also must be based on principles and planning and implementation arrangements established in this RPF. An abbreviated RP normally includes the following contents:

- a) a census survey of displaced persons and valuation of assets;
- b) description of compensation and other resettlement assistance to be provided;
- c) eligibility criteria;
- d) consultation and disclosure arrangements;
- e) organizational arrangements for implementation
- f) timetable and budget;
- g) monitoring arrangements;
- h) grievance procedures

#### **RP Prepar[ation] and Approv[al]**

14. Once it is determined that land acquisition or any associated impacts is essential to complete any project activities, resettlement planning should begin. The overall responsibility for preparation and implementation of any necessary RPs rests with sponsors of individual subprojects. The subproject owner will carry out, or cause to be carried out, a census survey to identify and enumerate all displaced persons, and a socioeconomic survey to determine the range and scope of adverse impacts in the affected area. The census survey must cover 100 per cent of the persons to be displaced; the socioeconomic survey may be undertaken on a sample basis. Based on an accurate baseline census survey and social economic survey, the RAP will be prepared in accordance with the policy principles and planning and implementation arrangements set forth in this RPF, and established appropriate mitigation measures as appropriate for all categories of adverse impacts.

15. EXIM Bank's Project Unit will actively involve in resettlement preparation in order to ensure satisfactory RAPs are prepared for subprojects involved with any potential land acquisition and resettlement, and submit them to the World Bank for review. All RAPs prepared must be reviewed and cleared by the Bank prior to awarding of contracts for the civil works causing the displacement.

#### **Entitlement Policy**

16. All displaced persons are eligible for compensation and/or other forms of assistance, as relevant to the nature of impacts affecting them.

17. In general, people eligible for compensation would include those affected in the following ways:

Land to be permanently acquired for the project: This refers to (a) members of affected villages who have formal land use rights, and (b) those outsiders who are currently farming the land areas under lease arrangement. Displaced persons in category a) are entitled to compensation at replacement cost. For those in category b) they are entitled to compensation for lost crops and lost structures.

Loss of houses, other structures and fixed assets, including trees and standing crops: Owners of houses and other assets (regardless of whether they hold land title or building permits for structures erected prior to the cut-off date).

Losses associated with temporary impacts: This includes temporary loss of land, and transitional costs associated with moving, or disturbance to businesses during construction.

18. Specifically, displaced persons will be entitled to the following types of compensation and rehabilitation measures, which are summarized in Table 3:

#### **1. Displaced persons losing agricultural land:**

- a) The preferred mechanism for compensation of lost agricultural land will be through provision of replacement land of equal productive capacity and satisfactory to the displaced person. If satisfactory replacement land cannot be identified, compensation at replacement cost may be provided.
- b) Displaced persons will be compensated for the loss of standing crops at market price, for economic trees at net present value, and for other fixed assets (ancillary structures, wells, fences, irrigation improvements) at replacement cost.
- c) Compensation will be paid for temporary use of land, at a rate tied to duration of use, and the land or other assets will be restored to prior use conditions at no cost to the owner or user.

#### **2. Displaced persons losing residential land and structures**

- a) Loss of residential land and structures will be compensated either in-kind (through replacement of house site and garden area of equivalent size, satisfactory to the displaced person, or in cash compensation at replacement cost, plus assistance for relocation.
- b) If after partial land acquisition the remaining residential land is not sufficient to rebuild or restore a house of other structures of equivalent size or value, then at the request of the displaced person the entire residential land and structure will be acquired at replacement cost.
- c) Compensation will be paid at replacement cost for fixed assets.
- d) Tenants, who have leased a house for residential purposes will be provided with a cash grant of three months rental fee at the prevailing market rate in the area, will be assisted in identifying alternative accommodation, and will receive assistance to cover the cost of the move.

#### **3. Displaced persons losing business**

- a) Compensation for loss of business will involve, as relevant: (i) provision of alternative business site of equal size and accessibility to customers, satisfactory to the displaced business operator; (ii) cash compensation for lost business structures; (iii) transitional support for loss of income (including employee wages) during the transition period; (iv) costs of relocation

#### **4. Vulnerable groups**

- a) The project vulnerable groups—the elderly, disabled, woman-headed households—should be identified in the census survey. Besides compensations and rehabilitations measures to be adopted for all affected people, additional assistance will be provided to them in order to ensure that their income and livelihood will be restored and improved through project implementation.

#### **5. Infrastructure and access to services**

Infrastructure (such as water sources, roads, sewage systems or electrical supply) and community services (such as schools, clinics or community centres) will be restored or replaced at no cost to the communities affected. If new resettlement sites are established, infrastructure and services consistent with local standards will be provided at no cost to the relocated persons.

Table 3: Entitlement Policies for Different Categories of Affected People

| TYPES OF IMPACTS                     | CATEGORIES OF AFFECTED PEOPLE  | TYPES OF COMPENSATION  | REHABILITATION PROVISIONS   |
|--------------------------------------|--|--|---|
| Permanent Land Acquisition           | Members of affected villages who have formal land use rights         | Compensation for land acquisition, resettlement subsidy and green crop compensation  | Land readjustment within villages and cash compensation, skill training, and social pension program |
|                                      | Individuals who farm the land under temporary leases                 | Green crop compensation  | Assistance of identifying alternative farmland for leasing  |
| Temporary Land Occupation            | Owners or users of affected land areas                               | Compensation for lost crops and yields during occupation   | Restore affected land areas into original condition after construction                              |
| House Demolition and Relocation      | Owners of lost residential land and structures                       | Alternative housing plot, cash compensation for affected structures, and assistance for moving and transfer  | New housing sites should be acceptable in terms of size and accessibility                           |
| Tenants Who Lease the Houses         | Compensation for moving and transfer assistance up to 3 months' rent | Assistance in identifying new rental houses  |   |
| Loss of Non-Residential Structures   | Displaced business operator and employees                            | (i) alternative business site or cash compensation based on replacement value; (ii) cash compensation for lost business structures; (iii) transitional support for loss of income (including employee wages); (iv) costs of relocation | New business sites should be acceptable in terms of size, location and business conditions          |
| Loss of Attachments and Other Assets | Owners of different attachments and assets                           | Cash compensation based on replacement values  |   |
| Loss of Infrastructure Facilities    | Owners or agencies responsible for affected facilities               | Restore them into original conditions and functions or provide cash to relevant departments to restore them. Infrastructures and services should be restored in a timely manner so that there are no impacts on the local communities  |   |

For affected Vulnerable Groups, such as elderly, disabled, and women-headed households, additional assistance will be provided in order to ensure that their income and livelihood will be restored and improved.

### Rehabilitation Measures

19. Compensation may be sufficient to allow displaced persons to restore incomes if paid at replacement cost, assuming that replacement assets are available. Often, however, resettlement may require displaced persons to obtain new skills required for resuming production in a new environment, or to pursue new sources of income. The RP should assess the significance of impacts to be imposed on displaced persons, and provide measures to assist those significantly affected in adapting to new livelihood challenges. Measures may include training, extension services, or employment, along with responsibility for providing them. Training activities should be followed by non-temporary employment opportunities. These measures should be specified in the RP.

### Consultation and Disclosure

20. To promote active project engagement and adaptation to changed living circumstances, displaced persons should be provided with opportunities to participate in planning and implementation. At minimum, displaced persons should be consulted on preferences and concerns during the resettlement planning process. All displaced persons are to be informed regarding potential impacts and proposed mitigation measures, including compensation rates. The RP will be disclosed, in a manner and location accessible to displaced persons while in draft, and subsequently disclosed again following finalization.

### Implementation Arrangements

21. The RP reviews organizational arrangements, to ensure that implementation procedures are clear, that responsibility is clearly designated for provision of all forms of assistance, and that adequate coordination among all agencies involved in RP implementation is assured. The RP must include a detailed implementation schedule, linking the project construction timetable to resettlement-related activities. The implementation timetable should establish that compensation (in cash or in kind) should be completed at least one month prior to initiation of civil works, and at least three months before residential structures are demolished.

### Costs and Budget

22. Each partial and full resettlement plan will include detailed cost of compensation and other rehabilitation entitlements and relocation of displaced persons, if that be the case, with a breakdown by agricultural land, residential land, business land, houses, businesses and other assets. The cost estimates will make adequate provision for contingencies. The resettlement plans will explicitly establish sources for all funds required, and will ensure that fund flow is compatible with the timetable for payment of compensation and provision of all other assistance.

### Grievance Procedures

23. RPs will establish means for displaced persons to bring complaints to the attention of relevant project authorities. Grievance procedures should include reasonable performance standards, e.g., time required to respond to complaints, and should be provided without charge to displaced persons. The RP should also state other avenues available to aggrieved persons if the project-related procedures fail to resolve complaints.

### Resettlement Monitoring

24. In addition to internal project monitoring arrangements, the project owner will ensure that RP implementation will be monitored by a qualified agency independent of project implementing agencies. The RP should establish the scope and frequency of monitoring activities. External monitoring reports will be prepared for simultaneous submission to the project office and the World Bank.

## **Annex: Resettlement Screening Table for Subprojects of China Energy Efficiency Finance III Project**

### **1. Basic Background of Subproject**

- a. Subproject Name
- b. Subproject Location
- c. Subproject Implementation Timeframe
- d. Subproject Sponsor

### **2. Resettlement Screening**

In accord[ance with] the provisions of the Resettlement Policy Framework, ExIm Bank will first screen the potential resettlement impacts by having individual subproject sponsors answer a set of questions to determine both current land use status in connection with the plants and potential land acquisition impacts for the proposed subprojects. For those subprojects that require any potential land acquisition and resettlement outside their existing plants, a resettlement action plan is required to address any negative impacts caused by land acquisition and resettlement. For those subprojects their connection plants having recently completed land acquisition, a due diligence review will be conducted to assess whether the land acquisition of plants had followed the relevant national laws and regulations with no remaining problems.

...

#### **Key Questions for Resettlement Screening Yes/No**

- (1) Whether land acquisition of the connection plant took place within last three years;
- (2) Whether proper land acquisition procedures had completed with compensations paid to affected parties.
- (3) Whether the connection plant has proper land use certificate for the current operation;
- (4) Whether all proposed subproject activities would be located within the existing premise;
- (5) Whether additional land acquisition or occupation would be required outside the existing plant;
- (6) Whether such land acquisition involves any farmland or houses demolition.

### **3. Preparation of Resettlement Instrument**

The preparation of such resettlement instruments will be responsible by the sponsor of subproject under supervision of ExIm Bank, which needs to be reviewed and approved by the Bank along with subproject appraisal.

## **68. Criminal Law, Art. 164 (as amended February 2011)**

Retrieved from [http://www.lawinfochina.com/display.aspx?id=8568&lib=law&SearchKeyword=&SearchCKeyword=中华人民共和国刑法修正案\(八\)](http://www.lawinfochina.com/display.aspx?id=8568&lib=law&SearchKeyword=&SearchCKeyword=中华人民共和国刑法修正案(八))

Order of the President of the People's Republic of China (No.41)

The Amendment (VIII) to the Criminal Law of the People's Republic of China, as adopted at the 19th meeting of the Standing Committee of the Eleventh National People's Congress of the People's Republic of China on February 25, 2011, is hereby promulgated, and shall come into force on May 1, 2011.

President of the People's Republic of China: Hu Jintao, February 25, 2011



Amendment (VIII) to the Criminal Law of the People's Republic of China

(Adopted at the 19th Meeting of the Standing Committee of the Eleventh National People's Congress of the People's Republic of China on February 25, 2011)

...

29. Article 164 is amended as: "Whoever gives any property to a staff member of a company, an enterprise or any other entity for any improper benefit shall be sentenced to imprisonment of not more than 3 years or criminal detention if the amount of property is relatively large; or be sentenced to imprisonment of not less than 3 years but not more than 10 years and a fine if the amount of property is huge.

Whoever gives any property to a functionary of a foreign country or an official of an international public organization for any improper commercial benefit shall be punished according to the provision of the preceding paragraph.

Where an entity commits a crime as provided for in the preceding two paragraphs, a fine shall be imposed on it, and its directly responsible person and other directly liable persons shall be punished according to the provision of Paragraph 1 of this Article.

A briber who voluntarily confesses to his bribery before a criminal investigation on him is opened may be given a mitigated penalty or be exempted from penalty."

...

### **69. Notice of the CBRC on Issuing the Green Credit Guidelines (CBRC, February 2012)**

Retrieved from <http://www.cbrc.gov.cn/EngdocView.do?docID=3CE646AB629B46B9B533B1D8D9FF8C4A>

CBRC local offices, policy banks, state-owned commercial banks, joint-stock commercial banks, financial assets management companies, the PSBC, provincial rural credit unions, as well as all trust firms, enterprise group finance companies and financial leasing firms directly regulated by the CBRC:

To implement the macro adjustment policies provided for in the Integrated Working Plan of the State Council for Energy Conservation and Emission Reduction during the 12th Five-year Period and the Comments of the State Council on Strengthening Environmental Protection Priorities, and to follow the requirements of matching supervisory policies with industrial policies, the CBRC has formulated the Green Credit Guidelines for the purpose of encouraging banking institutions to, by focusing on green credit, actively adjust credit structure, effectively fend off environmental and social risks, better serve the real economy, and boost the transformation of economic growth mode and adjustment of economic structure. The Guidelines are hereby printed and issued for implementation.

Banking supervisory authorities should forward the Notice to local banking institutions and urge them into implementation.

Feb. 24, 2012

The China Banking Regulatory Commission

Green Credit Guidelines

## Chapter 1: General Provisions

**Article 1** For the purpose of encouraging banking institutions to develop green credit, these Guidelines are formulated pursuant to the *Law of the People's Republic of China on Banking Regulation and Supervision and the Law of the People's Republic of China on Commercial Banks*.

**Article 2** Banking Institutions mentioned herein include policy banks, commercial banks, rural cooperative banks and rural credit cooperatives lawfully incorporated within the territory of the People's Republic of China.

**Article 3** Banking institutions shall promote green credit from a strategic height, increase the support to green, low-carbon and recycling economy, fend off environmental and social risks, and improve their own environmental and social performance, thus optimizing their credit structure, improving the quality of services, and facilitating the transformation of development mode.

**Article 4** Banking institutions shall effectively identify, measure, monitor and control environmental and social risks associated with their credit activities, establish environmental and social risk management system[s], and improve relevant credit policies and process management.

The environmental and social risks mentioned herein refer to the hazards and risks on the environment and society that may be brought about by the construction, production and operating activities of banking institutions' clients and key affiliated parties thereof, including environmental and social issues related to energy consumption, pollution, land, health, safety, resettlement of people, ecological protection, climate change, etc.

**Article 5** The CBRC is responsible for, in accordance with applicable laws, regulating and supervising banking institutions' green credit business and their environmental and social risk management.

## Chapter 2: Organization and Management

**Article 6** The board of directors or supervisory board of a banking institution shall build and promote green credit concepts concerning energy saving, environmental protection and sustainable development, be committed to giving play to the functions of facilitating holistic, coordinated and sustainable economic and social development, and establish a sustainable development model that will benefit the society at the same time.

**Article 7** The board of directors or supervisory board of a banking institution is responsible for developing [a] green credit development strategy, approving the green credit objectives developed by senior management and the green credit report submitted by senior management, and monitoring and assessing the implementation of green credit development strategy.

**Article 8** The senior management of a banking institution shall, pursuant to the resolutions of the board of directors or supervisory board, develop the green credit objectives, have in place relevant mechanisms and processes, define clearly the roles and responsibilities, conduct internal checks and appraisal[s], annually provide report to the board of directors or supervisory board on the development of green credit, and [expediently] submit relevant reports to competent supervisory authorities.

**Article 9** The senior management of a banking institution shall assign a senior officer and a department and configure them with necessary resources to organize and manage green credit activities. Where necessary, a cross-departmental green credit committee can be set up to coordinate relevant activities.

### Chapter 3: Policy, System and Capacity Building

**Article 10** Banking institutions shall, as per national environmental protection laws and regulations, industrial policies, sector entry policies, and other applicable regulations, establish and constantly improve the policies, systems and processes for environmental and social risk management and identify the directions and priority areas for green credit support. As for industries falling within the national “restricted” category and industries associated with major environmental and social risks, they shall customize credit granting guidelines, adopt differentiated and dynamic credit granting policies, and implement the risk exposure management system.

**Article 11** Banking institutions shall develop client environmental and social risk assessment criteria, dynamically assess and classify client environmental and social risks, and consider the results as important bas[es] for credit rating, access, management and exit. They shall adopt differentiated risk[] management measures concerning loan investigation, review and inspection, loan pricing, and economic capital allocation.

Banking institutions shall prepare a list of clients currently faced with major environmental and social risks, and require these clients to take risk mitigation actions, including developing and having in place major risk response plans, establishing sufficient, effective stakeholder communication mechanisms, and finding a third party to share such risks.

**Article 12** Banking institutions shall establish working mechanisms conducive to green credit innovation to boost innovation of green credit processes, products and services while effectively curbing risks and ensuring business continuation.

**Article 13** Banking institutions shall give priority to their own environmental and social performance, set up appropriate systems, step up the publicity and education on green credit concepts, standardize their operational behaviours, promote green office[s], and improve the level of intensive management.

**Article 14** Banking institutions shall strengthen green credit capacity building, establish and improve green credit labeling and statistics system[s], improve relevant credit management systems, enhance green credit training, develop and employ related professionals. Where necessary, they can hire an eligible, independent third party to assess environmental and social risks or acquire related professional services by means of outsourcing.

### Chapter 5: Process Management

**Article 15** Banking institutions shall strengthen due diligence in credit granting. The scope of due diligence on environmental and social risks shall be defined according to the characteristics of the sector and region in which the client and its project is located, so as to ensure the due diligence is complete, thorough and detailed. Where necessary, the banking institutions can seek . . . support from an eligible, independent third party and competent authorities.

**Article 16** Banking institutions shall examine the compliance of clients to whom credit will be granted. As for environmental and social performance, compliance checklist[s] and compliance risk checklist[s] shall be developed according to the characteristics of different sectors, so as to ensure compliance, effectiveness and completeness of the documents submitted by the clients, and make sure they have paid enough attention to related risk points, performed effective dynamic control, and satisfied the requirements on substantial compliance.

**Article 17** Banking institutions shall strengthen credit approval management, and define reasonable level[s] of credit granting authority and approval process[es] according to the nature and severity of environmental and social risks faced by the clients. Credit[] may not be granted to clients whose environmental and social performance fails to meet compliance requirements.

**Article 18** Banking institutions shall, by improving contract clauses, urge their clients to strengthen environmental and social risk management. As for clients involving major environmental and social risks, the contract shall provide for clauses that require them to submit environmental and social risk report[s], state and avow that they will strengthen environmental and social risk management, and promise that they are willing to be supervised by the lender; the contract shall also provide for clauses concerning the remedies banking institutions can resort to in the event of default on environmental and social risks made by the clients.

**Article 19** Banking institutions shall enhance credit funds disbursement management, and consider appropriation management, and regard how well clients have managed environmental and social risks as important bas[e]s for credit funds appropriation. As for projects to which credit is granted, all stages, including design, preparation, construction, completion, operation and shutdown shall be subjected to environmental and social risk assessment. Where major risks or hazards are identified, credit funds appropriation can be suspended or even terminated.

**Article 20** Banking institutions shall strengthen post-loan management. As for clients involving potential major environmental and social risks, relevant and pertinent post-loan management actions shall be developed and implemented. They shall watch closely the impact of national policies on the clients' operation, step up dynamic analysis, and make timely adjustment[s] to asset risk classification, reserve provisioning and loss write-off. They shall establish and improve internal reporting system[s] and accountability system[s] concerning major environmental and social risks faced by the clients. Where [a] major environmental or social risk event occurs to the client, the banking institution concerned shall [expediently] take relevant risk responses and report to competent supervisory authorities on [the] potential impact of said event on itself.

**Article 21** Banking institutions shall strengthen the environmental and social risk management for overseas projects to which credit will be granted and make sure project sponsors abide by applicable laws and regulations on environmental protection, land, health, safety, etc. of the country or jurisdiction where the project is located. The banking institutions shall . . . promise in public that appropriate international practices or international norms will be followed as far as such overseas projects are concerned, so as to ensure alignment with good international practices.

#### **Chapter 5: Internal Controls and Information Disclosure**

**Article 22** Banking institutions shall incorporate green credit implementation into the scope of internal compliance examination, and regularly organize and carry out internal auditing on green credit. Where major deficiencies are identified, investigation shall be conducted to determine whom to be held accountable as per applicable regulations.

**Article 23** Banking institutions shall establish effective green credit appraisal and evaluation system[s] and reward and penalty system[s], and have in place incentive and disciplinary measures, so as to ensure sustained and effective offering of green credit.

**Article 24** Banking institutions shall make public their green credit strategies and policies, and fully disclose developments of their green credit business. As for credit involving major environmental and social risks, the banking institutions shall disclose relevant information according to laws and regulations, and be subjected to . . . oversight by the market and stakeholders. Where necessary, an eligible, independent third party can be hired to assess or audit the activities of banking institutions in performing their environmental and social responsibilities.

#### **Chapter 6: Monitoring and Examination**

**Article 25** Banking supervisory authorities at all levels shall strengthen the coordination with competent authorities, establish and improve information sharing mechanism[s], improve information services, and remind banking institutions of related environmental and social risks.

**Article 26** Banking supervisory authorities at all levels shall strengthen off-site surveillance, improve off-site supervisory indicator system[s], enhance the monitoring and analysis of environmental and social risks faced by banking institutions, [expediently] guide them to strengthen risk management and adjust credit orientation.

Banking institutions shall, pursuant to the provisions hereof, perform overall green credit evaluation at least once every two year, and submit the self-evaluation report to competent banking supervisory authorities.

**Article 27** When organizing and conducting on-site examination, banking supervisory authorities shall take into full account the environmental and social risks faced by banking institutions, and make clear the scope and requirements of examination. As for regions or banking institutions involving prominent environmental and social risks, ad hoc examination shall be conducted and . . . said institutions [shall be urged] to improve in light of examination results.

**Article 28** Banking supervisory authorities shall provide more guidance to banking institutions on green credit self-evaluation, and, in conjunction with the results of off-site surveillance and on-site examination, holistically assess the green credit performance of banking institutions, and treat the assessment results, as per applicable laws and regulations, as important bas[e]s for supervisory rating, institution licensing, business licensing, and senior officer performance evaluation.

#### **Chapter 7: Supplementary Provisions**

**Article 29** These Guidelines become effective as of the date of promulgation. Village banks, lending firms, rural mutual cooperatives and non-banking financial institutions shall enforce actions in reference to these Guidelines.

**Article 30** These Guidelines are subject to interpretations by the CBRC.

### ***Section Seven: Framework Policies Relating to Economic Engagement With Africa<sup>9</sup>***

#### ***70. Program for China–Africa Co-operation in Economic and Social Development (October 2000)***

Retrieved from <http://www.china.org.cn/english/features/focac/185182.htm>

The Forum on China–Africa Cooperation–Ministerial Conference 2000 was held in Beijing, China from October 10 to 12, 2000. Ministers from China and 44 African countries exchanged views and are convinced of the imperatives for a dynamic, new strategic partnership between Africa and the PRC. The Ministers commit themselves to co-operating in all fields, especially social and economic development, on the basis of equality and mutual respect with a view to renewing, developing and expanding China–Africa cooperation in the 21st century.

#### **1. Foreword**

1.1 The Ministers reviewed with satisfaction the results of the cooperation between China and African countries over the past 50 years. The Ministers believe that such co-operation not only directly benefits their peoples but also enhances friendship and mutual understanding. The Ministers note that China and African countries have made great efforts in recent years to explore new forms of co-operation, particularly between enterprises. They, however, note that both Africa and China still have great potential, which should be properly managed and strategically directed for their mutual benefit.

<sup>9</sup> See explanatory text at footnote 2.

1.2 The Ministers also agree that, in view of the present unjust and inequitable world order. China and African countries should position themselves to influence the establishment of a new world order which will reflect their needs and interests. To this end, they agree to adopt a workable program towards the creation of a new strategic partnership for sustainable development in the 21st century.

1.3 The Ministers further observe that globalization currently presents more challenges and risks than opportunities to the vast number of developing countries and therefore express their determination to strengthen the existing cooperation between China and African countries in all fields. They also agree to earnestly explore new ideas and strategies to develop their respective economies and enhance their capabilities to participate in globalization.

1.4 In pursuit of the foregoing objectives the Ministers reiterate that China and African countries will honour the following principles of cooperation for their future development:

- 1.4.1 equality and mutual benefit
- 1.4.2 diversity in form and content
- 1.4.3 emphasis on practical results
- 1.4.4 pursuit of common progress
- 1.4.5 amicable settlement of differences

## **2. Inter-governmental Cooperation**

2.1 The Ministers maintain that the two sides should use and improve the existing bilateral consultation mechanisms to strengthen inter-governmental links, explore new areas of co-operation, closely monitor the progress in their existing co-operation and share experiences in order to enhance their mutually beneficial partnership. In light of the development and changes in their bilateral economic and trade relations, the two sides agree to continue to review and conclude agreements as necessary, with a view to encouraging preferential market access for products from African countries into China.

2.2 The Ministers agree to promote the exchange of high-level visits and conduct regular inter-governmental dialogue and cooperation, so as to create a favourable climate for business contacts and trade between China and Africa. In addition, they undertake to promote positive interaction with relevant trade and commercial organizations and assist in the establishment of effective communication links between such organizations in China and Africa, in order to ensure that they play an active role in the development of our economies.

2.3 The Chinese government undertakes to continue to co-operate with and provide development assistance to African countries, focusing on the promotion of local industries, sourcing of local materials and the creation of employment. Such development assistance should support national policies of African countries and be awarded in consultation with national governments. Projects will be aimed at the utilization of local expertise and materials, the creation of local employment and the development of human resources of African countries.

2.4 To support African countries in their economic and social development, the Chinese side undertakes to continue providing assistance to African countries, within its capacity, in light of specific economic conditions of the recipient countries and within the framework of South-South cooperation. This support will mainly take the form of aid grants, concessional loans and interest-free loans to be mainly used in areas determined by both sides.

### 3. Trade and Investment

3.1 The Ministers acknowledge progress in the area of trade and investment promotion and express their readiness to develop a strategy by creating an enabling legal and business environment, so that such cooperation will gradually play a leading role in the China-Africa economic partnership.

3.2 The Ministers agree to conclude an appropriate legal framework on:

3.2.1 trade promotion and capacity building;

3.2.2 encouragement, protection and guarantee of investments;

3.2.3 avoidance of double taxation; [and]

3.2.4 enhancement of co-operation in marine shipping and air transportation.

3.3 The Ministers agree to undertake joint efforts to improve trade and investment environment through such measures as granting each other preferential treatment in conformity with existing national laws, equitable treatment to all investors together with investment guarantees and just settlement of eventual disputes, in accordance with internationally accepted rules and practices.

### 4. Trade

4.1 The Ministers note the necessity to move towards balanced and enhanced trade and acknowledge the need to assist in improving the production capacity in Africa and in diversifying the composition of African exports. They pledge to collaborate and share experience in overcoming Africa's export dependence on primary commodities, single products and raw materials.

4.2 The Ministers stress the need to harmonize their trade policies and to participate actively in trade negotiations, including within the framework of the WTO, in order to ensure that the multilateral trading system contributes to enhanced competitiveness, economic growth and sustainable development of their countries.

4.3 The Ministers express the readiness of their business communities to vigorously explore and benefit from all opportunities offered by their respective markets, in an enterprising spirit, while complying with internationally accepted norms and quality standards in their exported products.

4.4 Noting with concern the imbalance in the two-way trade and the need to address it as soon as possible, the Chinese side undertakes to:

4.4.1 encourage its enterprises to give preference to the import of African products in the light of market demand and conditions;

4.4.2 strive to make its investment and trade centers in Africa a success, and to facilitate the establishment of similar centers of African countries in China, so that these centres will play an effective bridging role in facilitating exchanges and communications between enterprises of the two sides;

4.4.3 establish a China-Africa Joint Business Council in coordination with the Chambers of Commerce of African countries and professional organizations, so as to put in place a dialogue and consultation mechanism with African enterprises and promote economic cooperation and trade between them; and

4.4.4 establish a China-Africa Products Exhibition Centre in China to promote two-way trade and facilitate access for African products to the Chinese market.

4.5 The Ministers state [the] importance of providing better and preferential access to the Chinese market for African exports of commercial importance.

4.6 The Ministers agree to ensure better access to each others' market, in the context of multilateral trade liberalization and progress made with due regard to regional integration arrangements in Africa.

## **5. Investment**

5.1 The Ministers pledge to encourage mutual investment by their enterprises, the exchange of experience in business management, the setting up of joint ventures or sole ownership enterprises, including small- or medium-[sized] ones and the establishment of joint business forums, as key factors in the China-Africa economic partnership.

5.2 The Chinese side will set aside special funds to support and encourage investment by well-established Chinese enterprises in African countries to set up joint equity or cooperation projects adapted to local need[s] in terms of job creation and transfer of technologies.

5.3 The Chinese side agrees to share with African countries its experience in the field of investment promotion relating to the establishment and management of free and special economic zones.

5.4 The Ministers agree to identify their complementarities in order to invest in common projects through bilateral and/or trilateral cooperation channels.

5.5 They agree that the Joint Business Council to be established between their public/private sectors will be aimed at organizing regular business meetings among their economic operators and professional organizations as well as training seminars on doing business with special focus on their market specific aspects.

5.6 The Minister express their readiness to develop further, as necessary, the finance schemes needed to implement mutual investment and economic partnership between China and Africa.

## **6. Cooperation in Engineering and Other Infrastructural Projects**

6.1 The Ministers positively appraise the cooperation between the two sides in engineering projects in African countries. The Chinese side will continue to encourage well-established Chinese enterprises to participate in economic and infrastructure construction and development projects in African countries. It also expresses its readiness to make available its modern and appropriate technologies, as well as managerial expertise, in various areas such as engineering contracting, technical and management cooperation. It will also encourage these enterprises to enhance cooperation with their counterparts in Africa and employ, as well as train, more local people, including the usage of locally available resources. In such co-operation, the Chinese side may also consider accepting various forms of payment such as payment in kind, to ease African countries' financial burden and help increase their export to China.

## **7. Financial Co-operation**

7.1 Noting that co-operation between financial institutions of China and African countries has just started, the Ministers express their determination to encourage them to vigorously look into the possibility of co-operation in such forms as parallel and co-financing arrangements. They believe that it is imperative to continue to enhance financial co-operation between China and the African Development Bank Group (ADB), the Eastern and Southern African Trade and Development Bank (PTA) and other multilateral financial institutions in Africa, in particular to implement the bilateral agreement on technical cooperation concluded between China and the ADB.



## 8. Debt Relief and Cancellation

8.1 The Ministers note with concern that the heavy debt burden not only seriously hampers the economic growth of African countries, but also causes worsening social problems. They welcome the international efforts for debt relief or cancellation over the past few years and call on developed countries and international financial institutions that are main creditors to fulfill their commitments at an early date. The momentum on debt relief over the past years must be maintained and developed.

8.2 The Chinese side notes that African debt to China does not constitute the bulk of the continent's debt stock and that China is herself a developing country and a net debtor. Notwithstanding this, the Chinese side expresses its readiness to help relieve the debt burden of African countries. In this connection, the Chinese side undertakes to reduce or cancel debt amounting to CNY10 billion owed by the heavily indebted poor countries and least developed countries in Africa in the coming two year. The details will be discussed through bilateral channels.

8.3 The Ministers recognize that China, as a permanent member of the United Nations Security Council, is a significant partner in developing support around the issue of debt relief for Africa.

## 9. Tourism

9.1 The Ministers acknowledge that tourism is an important economic activity which has the potential for generation financial resources that will help Africa's accelerated economic growth, the creation of employment opportunities and the alleviation of poverty. They agree to cooperate in promoting tourism and undertake to encourage investment in the development of tourism infrastructure and capacity, with specific focus on the development of small, micro and medium enterprises.

## 10. Migration

10.1 The Ministers agree that their respective governments will facilitate the processing of applications for work permits and visas, in line with the existing legislation and policy pertaining to migration, and that deficiencies will be addressed within the framework of bilateral agreements.

## 11. Agricultural Cooperation

11.1 The Ministers express their readiness to share their respective countries' experience in various fields of agricultural development and fisheries.

11.2 Realizing the vital importance of agricultural development to eliminating poverty and ensuring food security, the Ministers are determined to take all the necessary measures to ensure successful co-operation in this area.

11.3 The two sides also agree to further explore effective ways of trilateral co-operation among China, African countries and the relevant international institutions such as the United Nations Food and Agriculture Organization (FAO).

## 12. Exploration and Utilization of Natural Resources and Energy

12.1 Cognizant of the importance of their respective natural resources, the two sides agree to co-operate in the use of such resources. China agrees that Africa needs to [benefit from] its agricultural, mineral and metallurgical resources, in order to generate industrial economic activities. In this regard, China agrees to promote investment in, and exploration and beneficiation of metallurgical resources and that such beneficiation should be done in Africa.

12.2 The Ministers agree to facilitate the exploration and beneficiation of such resources on a reciprocal basis with due consideration to sound environmental practices.

### **13. Scientific, Technological and Cultural Cooperation**

13.1 Aware of the importance of scientific, technological and cultural cooperation, the two sides commit themselves to:

13.1.1 enhancing cooperation in the areas of basic and applied research, and development and transfer of technology;

13.1.2 supporting the upgrading of Africa's indigenous technologies;

13.1.3 working together for the extension of technologies already developed and employed, such as utilization of solar energy, disaster prevention, management and relief, as well as development of water resources, so as to make them serve the economic revitalization of both China and African countries; and

13.1.4 increasing cultural exchanges, particularly the exchange of visits by high-level cultural delegations and sports and art groups, setting up more art exhibitions in each other's territory, and making a greater effort to study and promote each other's culture.

### **14. Co-operation in Medical Care [and] Public Health**

14.1 Recognizing the positive role of the Chinese medical teams in Africa and grateful for the efforts of the Chinese government in this regard, the African Ministers welcome the commitment made by the Chinese side to send more medical teams to African countries and they promise to create suitable working and living conditions for these teams.

14.2 The Chinese side agrees to give positive consideration to the requests of African countries and promises to continue to provide them with medical equipment, facilities, medicine and more training to local medical personnel, and promote co-operation in the use of traditional medicine and pharmacy, so as to ensure more fruitful results in such co-operation.

14.3 The two sides agree to conduct co-operation in such areas as reducing infant and maternal mortality rates, and preventing and treating HIV/AIDS, malaria, tropical and other diseases.

### **15. Education and Human Resources Development**

15.1 The Minister[s] agree to expand cooperation in education and human resources development. The Chinese side pledges to:

15.1.1 grant more scholarships to African students to study in China, continue to send teachers to Africa to help local institutions of higher learning improve their disciplines and specialties, and set up channels of communications between universities of the two sides for the study of the Chinese and African civilizations; and

15.1.2 establish an African Human Resources Development Fund and gradually increase financial contribution to the Fund for the training of professionals of different disciplines for African countries.

15.2 The two sides agree to work out country-specific training plans through appropriate channels, identify specific cooperation projects and facilitate their implementation.

## **16. Environmental management and Bio-diversity**

16.1 The Ministers support international efforts towards environmental management and sustainable human development. The two sides express their commitment to the key elements of the various environmental conventions and undertake to forge closer co-operation and joint participation in capacity building for integrating environmental management in national development.

16.2 In pursuit of this, China and Africa undertake to co-operate in all fields of environmental management, including pollution control, bio-diversity conservation, protection of forest ecosystems, fisheries and wildlife management in order to ensure economic and sustainable human development.

## **17. Trilateral Cooperation**

17.1 The two sides stress the importance of the development of trilateral cooperation to achieve the objectives contained in the present program of co-operation and the promotion of Sino-African relation, notably within the framework of South-South cooperation. They note that such an initiative will lead to the effective utilization of available financial resources for the further development of human and natural resources of the countries involved.

## **18. Co-operation on Arms Control**

18.1 The Ministers express deep concern at the large influx of small arms and light weapons to conflict areas in Africa and agree that this constitutes a threat to peace, security/stability and development on the continent. They pledge to fully co-operate at international forums to prevent and combat the problem of illicit proliferation, circulation and trafficking of small arms and light weapons.

## **19. Multilateral Cooperation**

19.1 Convinced of the pivotal importance of closer South-South cooperation under the current circumstances, the two sides agree to:

19.1.1 strengthen cooperation and consultation at multilateral forums such as the UN System, UNCTAD, and the WTO, so as to safeguard the common interests of the developing countries; and

19.1.2 coordinate positions in reforming multilateral economic and trade regimes and formulating relevant rules, with a view to increasing the collective bargaining capacity of developing countries, and make joint efforts towards the democratization of international relations and the establishment of a just and equitable new international economic order.

19.2 The Ministers agree to work for the reform of the United Nations and particularly the UN Security Council that will be geographically representative. We call for the recognition of the legitimate place due to Africa in the Security Council, the organizations and specialized agencies of the United Nation system.

## **20. Follow-up Mechanisms**

20.1 The Ministers agree to establish corresponding committees for follow-up actions of the Forum on China-Africa Cooperation at Ministerial level.

20.2 The two sides agree to set up joint follow-up mechanisms at various levels. Under these mechanisms, the Ministers will meet in three years' time to evaluate progress in the implementation of the Program, Senior Officials in two years' time and Ambassadors resident in China on a regular basis. The Senior Officials Meetings and the Ministerial Conferences will be convened in China and Africa on an alternate basis within the framework of the Forum on China-Africa Co-operation.

## 71. *China's African Policy (January 2006)*

Retrieved from <http://www.fmprc.gov.cn/eng/zxxx/t230615.htm>

### **Foreword**

The first few years of the new century witness a continuation of complex and profound changes in the international situation and further advance of globalization. Peace and development remain the main themes of our times. Safeguarding peace, promoting development and enhancing co-operation, which is the common desire of all peoples, represents the irresistible historical trend. On the other hand, destabilizing factors and uncertainties in the international situation are on the rise. Security issues of various kinds are interwoven. Peace remains evasive and development more pressing.

China, the largest developing country in the world, follows the path of peaceful development and pursues an independent foreign policy of peace. China stands ready to develop friendly relations and cooperation with all countries on the basis of the Five Principles of Peaceful Coexistence so as to contribute to peace, stability and common prosperity around the world.

The African continent, which encompasses the largest number of developing countries, is an important force for world peace and development. China-Africa traditional friendly relations face fresh opportunities under the new circumstances. By this African Policy Paper, the Chinese Government wishes to present to the world the objectives of China's policy towards Africa and the measures to achieve them, and its proposals for co-operation in various fields in the coming years, with a view to promoting the steady growth of China-Africa relations in the long term and bringing the mutually-beneficial cooperation to a new stage.

### **Part I: Africa's Position and Role**

Africa has a long history, vast expanse of land, rich natural resources and huge potential for development. After long years of struggle, the African people freed themselves from colonial rule, wiped out apartheid, won independence and emancipation, thus making significant contribution to the progress of civilization.

Following their independence, countries in Africa have been conscientiously exploring a road to development suited to their national conditions and seeking peace, stability and development by joint efforts. Thanks to the concerted efforts of African countries and the Organization of African Unity (OAU)/the African Union (AU), the political situation in Africa has been stable on the whole, regional conflicts are being gradually resolved and economy has been growing for years. The NEPAD has drawn up an encouraging picture of African rejuvenation and development. African countries have actively participated in the South-South cooperation and worked for the North-South dialogue. They are playing an increasingly important role in international affairs.

Africa still faces many challenges on its road of development. However, with the persistent efforts of African countries and the continuous support of the international community, Africa will surely surmount difficulties and achieve rejuvenation in the new century.

### **Part II: China's Relations with Africa**

China-Africa friendship is embedded in the long history of interchange. Sharing similar historical experience, China and Africa have all along sympathized with and supported each other in the struggle for national liberation and forged a profound friendship.

The founding of the People's Republic of China and the independence of African countries ushered in a new era in China-Africa relations. For over half a century, the two sides have enjoyed close political ties and frequent exchange

of high-level visits and people-to-people contacts. Our bilateral trade and economic cooperation have grown rapidly; cooperation in other fields has yielded good results; and consultation and coordination in international affairs have been intensified. China has provided assistance to the best of its ability to African countries, while African countries have also rendered strong support to China on many occasions.

Sincerity, equality and mutual benefit, solidarity and common development—these are the principles guiding China-Africa exchange and co-operation and the driving force to lasting China-Africa relations.

### **Part III: China's African Policy**

Enhancing solidarity and cooperation with African countries has always been an important component of China's independent foreign policy of peace. China will unswervingly carry forward the tradition of China-Africa friendship, and, proceeding from the fundamental interests of both the Chinese and African peoples, establish and develop a new type of strategic partnership with Africa, featuring political equality and mutual trust, economic win-win cooperation and cultural exchange. The general principles and objectives of China's African policy are as follows:

- Sincerity, friendship and equality. China adheres to the Five Principles of Peaceful Coexistence, respects African countries' independent choice of the road of development and supports African countries' efforts to grow stronger through unity.
- Mutual benefit, reciprocity and common prosperity. China supports African countries' endeavor for economic development and nation building, carries out cooperation in various forms in economic and social development, and promotes common prosperity of China and Africa.
- Mutual support and close coordination. China will strengthen cooperation with Africa in the UN and other multilateral systems by supporting each other's just demand and reasonable propositions and continue to appeal to the international community to give more attention to questions concerning peace and development in Africa.
- Learning from each other and seeking common development. China and Africa will learn from and draw upon each other's experience in governance and development, strengthen exchange and co-operation in education, science, culture and health. Supporting African countries' efforts to enhance capacity building, China will work together with Africa in the exploration of the road of sustainable development.

The one China principle is the political foundation for the establishment and development of China's relations with African countries and regional organizations. The Chinese Government appreciates the fact that the overwhelming majority of African countries abide by the one China principle, refuse to have official relations and contacts with Taiwan and support China's great cause of reunification. China stands ready to establish and develop state-to-state relations with countries that have not yet established diplomatic ties with China on the basis of the one China principle.

### **Part IV: Enhancing All-round Cooperation Between China and Africa**

#### **1. The political field**

##### **(1) High-level visits**

China will maintain the momentum of mutual visits and dialogues between Chinese and African leaders, with a view to facilitating communication, deepening friendship and promoting mutual understanding and trust.

### **(2) Exchanges between legislative bodies**

China favors increased multi-level and multi-channel friendly exchanges on the basis of mutual respect between China's National People's Congress (NPC) on the one hand and parliaments of African countries and the Pan-African Parliament of the AU on the other, for the purpose of deepening understanding and cooperation.

### **(3) Exchanges between political parties**

The Communist Party of China (CPC) develops exchanges of various forms with friendly political parties and organizations of African countries on the basis of the principles of independence, equality, mutual respect and non-interference in each other's internal affairs. The purpose of such exchanges is to increase understanding and friendship and seek trust and cooperation.

### **(4) Consultation mechanisms**

Mechanisms such as national bilateral committees between China and African countries, political consultation between foreign ministries, joint(mixed) committees on trade and economic cooperation and mixed committees on science and technology should be established and improved, so as to institutionalize dialogue and consultation in a flexible and pragmatic manner.

### **(5) Co-operation in international affairs**

China will continue to strengthen solidarity and cooperation with African countries on the international arena, conduct regular exchange of views, coordinate positions on major international and regional issues and stand for mutual support on major issues concerning state sovereignty, territorial integrity, national dignity and human rights. China supports African nations' desire to be an equal partner in international affairs. China is devoted, as are African nations, to making the UN play a greater role, defending the purposes and principles of the UN Charter, establishing a new international political and economic order featuring justice, rationality, equality and mutual benefit, promoting more democratic international relationship and rule of law in international affairs and safeguarding the legitimate rights and interests of developing countries.

### **(6) Exchanges between local governments**

China's Central Government attaches importance to the exchanges between local governments of China and African countries, vigorously supports twin province/state and twin city relationship aimed at facilitating bilateral exchanges and cooperation in local development and administration.

## **2. The economic field**

### **(1) Trade**

The Chinese Government will adopt more effective measures to facilitate African commodities' access to Chinese market and fulfill its promise to grant duty-free treatment to some goods from the least developed African countries, with a view to expanding and balancing bilateral trade and optimizing trade structure. It intends to settle trade disputes and frictions properly through bilateral or multilateral friendly consultation, mutual understanding and mutual accommodation. Efforts will be made to encourage business communities on both sides to set up China-Africa Joint Chamber of Commerce and Industry. When conditions are ripe, China is willing to negotiate Free Trade Agreement (FTA) with African countries and African regional organizations.

## **(2) Investment**

The Chinese Government encourages and supports Chinese enterprises' investment and business in Africa, and will continue to provide preferential loans and buyer credits to this end. The Chinese Government is ready to explore new channels and new ways for promoting investment cooperation with African countries, and will continue to formulate and improve relevant policies, provide guidance and service and offer convenience. African countries are welcome to make investment in China. The Chinese Government will continue to negotiate, conclude and implement the Agreement on Bilateral Facilitation and Protection of Investment and the Agreement on Avoidance of Double Taxation with African Countries. The two sides should work together to create a favorable environment for investment and cooperation and protect the legitimate rights and interests of investors from both sides.

## **(3) Financial cooperation**

To further develop China-Africa cooperation in the area of finance, the Chinese Government will support the effort of Chinese financial institutions to increase exchanges and co-operation with their counterparts in African countries as well as regional financial institutions in Africa.

## **(4) Agricultural cooperation**

China intends to further promote its agricultural cooperation and exchanges with African nations at various levels, through multiple channels and in various forms. Focus will be laid on the cooperation in land development, agricultural plantation, breeding technologies, food security, agricultural machinery and the processing of agricultural and side-line products. China will intensify cooperation in agricultural technology, organize training courses of practical agricultural technologies, carry out experimental and demonstrative agricultural technology projects in Africa and speed up the formulation of China-Africa Agricultural Cooperation Program.

## **(5) Infrastructure**

The Chinese Government will step up China-Africa cooperation in transportation, communication, water conservancy, electricity and other infrastructures. It will vigorously encourage Chinese enterprises to participate in the building of infrastructure in African countries, scale up their contracts, and gradually establish multilateral and bilateral mechanisms on contractual projects. Efforts will be made to strengthen technology and management cooperation, focusing on the capacity-building of African nations.

## **(6) Resources cooperation**

The Chinese Government facilitates information sharing and co-operation with Africa in resources areas. It encourages and supports competent Chinese enterprises to cooperate with African nations in various ways on the basis of the principle of mutual benefit and common development, to develop and exploit rationally their resources, with a view to helping African countries to translate their advantages in resources to competitive strength, and realize sustainable development in their own countries and the continent as a whole.

## **(7) Tourism cooperation**

China will implement the program of Chinese citizens' group tour to some African nations and, grant more African countries, as they wish and as far as feasible, Approved Destination Status for out-bound Chinese tourist groups. China welcomes citizens from African nations for a tour of the country.

## **(8) Debt reduction and relief**

China is ready to continue friendly consultation with some African countries with a view to seek solution to, or reduction of, the debts they owe to China. It will urge the international community, developed countries in particular, to take more substantial action on the issue of debt reduction and relief for African nations.

#### **(9) Economic assistance**

In light of its own financial capacity and economic situation, China will do its best to provide and gradually increase assistance to African nations with no political strings attached.

#### **(10) Multilateral co-operation**

China is ready to enhance consultation and coordination with Africa within multilateral trade systems and financial institutions and work together to urge the UN and other international organizations to pay more attention to the question of economic development, promote South-South cooperation, push forward the establishment of a just and rational multilateral trade system and make the voices of developing countries heard in the decision-making of international financial affairs. It will step up cooperation with other countries and international organizations to support the development of Africa and help realize Millennium Development Goals in Africa.

### **3. Education, science, culture, health and social aspects**

#### **(1) Cooperation in human resources development and education**

The Chinese Government will give full play to the role of its "African Human Resources Development Foundation" in training African personnel. It will identify priority areas, expand areas of cooperation and provide more input according to the needs of African countries so as to achieve greater results.

Exchange of students between China and Africa will continue. China will increase the number of government scholarships as it sees fit, continue to send teachers to help African countries in Chinese language teaching and carry out educational assistance project to help develop Africa's weak disciplines. It intends to strengthen cooperation in such fields as vocational education and distance learning while encouraging exchanges and cooperation between educational and academic institutions of both sides.

#### **(2) Science and technology cooperation**

Following the principles of mutual respect, complementarity and sharing benefits, China will promote its cooperation with Africa in the fields of applied research, technological development and transfer, speed up scientific and technological cooperation in the fields of common interest, such as bio-agriculture, solar energy utilization, geological survey, mining and R&D of new medicines. It will continue its training programs in applied technologies for African countries, carry out demonstration programs of technical assistance, and actively help disseminate and utilize Chinese scientific and technological achievements and advanced technologies applicable in Africa.

#### **(3) Cultural exchanges**

China will implement agreements of cultural cooperation and relevant implementation plans reached with African countries, maintain regular contacts with their cultural departments and increase exchanges of artists and athletes. It will guide and promote cultural exchanges in diverse forms between people's organizations and institutions in line with bilateral cultural exchange programs and market demand.

#### **(4) Medical and health cooperation**

China is ready to enhance medical personnel and information exchange with Africa. It will continue to send medical teams and provide medicines and medical materials to African countries, and help them establish and improve medical facilities and train medical personnel. China will increase its exchanges and cooperation with African countries in the prevention and treatment of infectious diseases including HIV/AIDS and malaria and other diseases, research and application of traditional medicine and experience concerning mechanism for public health emergencies.



**(5) Media cooperation**

China wishes to encourage multi-tiered and multi-formed exchange and cooperation between the media on both sides, so as to enhance mutual understanding and enable objective and balanced media coverage of each other. It will facilitate the communication and contacts between relevant government departments for the purpose of sharing experiences on ways to handle the relations with media both domestic and foreign, and guiding and facilitating media exchanges.

**(6) Administrative cooperation**

China will carry out exchange and cooperation with African countries in civil service system building, public administration reform and training of government personnel. The two sides may study the feasibility of setting up a mechanism for personnel and administrative cooperation.

**(7) Consular cooperation**

China will hold regular/irregular consular consultations with African countries during which the two sides may have amicable discussions on urgent problems or questions of common interest in bilateral or multilateral consular relations in order to improve understanding and expand cooperation. The Chinese side will work with Africa to facilitate personnel flow and ensure the safety of their nationals.

**(8) People-to-people exchange**

China will encourage and facilitate the exchanges between people's organizations of China and Africa, especially the youth and women, with a view to increasing the understanding, trust and cooperation of people on both sides. It will encourage and guide Chinese volunteers to serve in African countries.

**(9) Environmental cooperation**

China will actively promote China-Africa co-operation in climate change, water resources conservation, anti-desertification, bio-diversity and other areas of environmental protection by facilitating technological exchange.

**(10) Disaster reduction, relief and humanitarian assistance**

China will actively carry out personnel exchange, training and technological cooperation in the fields of disaster reduction and relief. It will respond quickly to African countries' request for urgent humanitarian aid, encourage and support exchange and cooperation between the Red Cross Society of China and other NGOs on the one side and their African counterparts on the other side.

**4. Peace and security****(1) Military cooperation**

China will promote high-level military exchanges between the two sides and actively carry out military-related technological exchanges and cooperation. It will continue to help train African military personnel and support defense and army building of African countries for their own security.

**(2) Conflict settlement and peacekeeping operations**

China supports the positive efforts by the AU and other African regional organizations and African countries concerned to settle regional conflicts and will provide assistance within our own capacity. It will urge the UN Security Council to pay attention to and help resolve regional conflicts in Africa. It will continue its support to and participation in UN peacekeeping operations in Africa.

### (3) Judicial and police cooperation

China is prepared to promote exchange and cooperation between Chinese and African judicial and law enforcement departments. The two sides may learn from each other in legal system building and judicial reform so as to be better able to prevent, investigate and crack down on crimes. China will work together with African countries to combat transnational organized crimes and corruption, and intensify cooperation on matters concerning judicial assistance, extradition and repatriation of criminal suspects.

China will co-operate closely with immigration departments of African countries in tackling the problem of illegal migration, improve exchange of immigration control information and set up an unimpeded and efficient channel for intelligence and information exchange.

### (4) Non-traditional security areas

In order to enhance the ability of both sides to address non-traditional security threats, it is necessary to increase intelligence exchange, explore more effective ways and means for closer cooperation in combating terrorism, small arms smuggling, drug trafficking, transnational economic crimes, etc.

## **Part V: Forum on China-Africa**

### **Co-operation And Its Follow-up Actions**

Launched in 2000, the Forum on China-Africa Cooperation has become an effective mechanism for the collective dialogue and multilateral cooperation between China and Africa and put in place an important framework and platform for a new type of China-Africa partnership featuring long-term stability, equality and mutual benefit.

China attaches importance to the positive role of the Forum on China-Africa Cooperation in strengthening political consultation and pragmatic co-operation between China and Africa, and stands ready to work with African countries to conscientiously implement the Beijing Declaration of the Forum on China-Africa Cooperation, the Program for China-Africa Cooperation in Economic and Social Development and the Forum on China-Africa Cooperation-Addis Ababa Action Plan (2004-2006) and its follow-up action plans. China will work with African countries within the framework of the Forum to explore new ways to enhance mutual political trust, promote the comprehensive development of pragmatic co-operation, further improve the mechanism of the forum, and try to find the best way for furthering co-operation between the Forum and the NEPAD.

## **Part VI: China's Relations with African Regional Organizations**

China appreciates the significant role of the AU in safeguarding peace and stability in the region and promoting African solidarity and development. China values its friendly co-operation with the AU in all fields, supports its positive role in regional and international affairs and stands ready to provide the AU assistance to the best of its capacity.

China appreciates and supports the positive role of Africa's sub-regional organizations in promoting political stability, economic development and integration in their own regions and stands ready to enhance its amicable co-operation with those organizations.

## **72. Eight-Point Plan China Pledged at Forum on China–Africa Cooperation, Beijing Summit (September 2006)**

Retrieved from [http://news.xinhuanet.com/english2010/china/2011-04/21/c\\_13839683\\_19.htm](http://news.xinhuanet.com/english2010/china/2011-04/21/c_13839683_19.htm)

1. Increase assistance to African countries, and by 2009 double the size of its assistance to African countries in 2006.
2. Provide US\$3 billion in concessional loans and US\$2 billion in preferential export buyer's credit to African countries in the next three years.
3. Set up the China–Africa Development Fund, the total amount of which will gradually reach US\$5 billion, to give encouragement and support to Chinese companies investing in projects in Africa.
4. Help the African Union to build a convention center in order to support African countries in their efforts to strengthen themselves through unity and speed up African integration.
5. Cancel the repayment of interest-free government loans that had become due by the end of 2005 to China by Heavily Indebted Poor Countries (HIPC) and Least Developed Countries (LDC) in Africa that have diplomatic ties with China.
6. Further open the Chinese market to Africa, expand the scope of imports from African LDCs having diplomatic ties with China entitled to zero duty treatment from 190 tariff lines to over 440 tariff lines.
7. Set up three to five overseas economic and trade co-operation zones in African countries in the next three years.
8. Train 15,000 professionals for African countries in the next three years; send 100 senior agro-technology experts to Africa; set up in Africa 10 agro-technology demonstration centers with special features; assist African countries in building 30 hospitals and provide African countries with a grant of 300 million yuan that is used to supply anti-malaria drugs like artemisinin and build 30 centers for prevention and treatment of malaria; dispatch 300 youth volunteers to African countries; help African countries set up 100 rural schools; increase the number of Chinese government scholarships for African students from the current 2,000 per year to 4,000 per year by the end of 2008.

## **73. Forum on China–Africa Cooperation Sharm El Sheikh Action Plan (2010–2012) (November 2009)**

Source: <http://www.focac.org/eng/ltda/dsjbzjhy/hywj/t626387.htm>

### **1. PREAMBLE**

1.1 Ministers in charge of foreign affairs and economic co-operation from China and 49 African countries (hereinafter referred to as “the two sides”) met in Sharm El Sheikh, Egypt, on 8-9 November 2009 for the Fourth Ministerial Conference of the Forum on China–Africa Cooperation (FOCAC).

1.2 The two sides spoke highly of the FOCAC Beijing Summit and the Third Ministerial Conference held in Beijing in November 2006, recognizing that the new type of China–Africa strategic partnership featuring political equality and mutual trust, economic win–win cooperation and cultural exchanges, which was defined at the historic summit, opened broad prospects for deepening China–Africa cooperation, and set an example of South–South cooperation.

1.3 The two sides reviewed with satisfaction the implementation of the follow-up actions in the three years after the Beijing Summit, and were generally pleased with the comprehensive and effective implementation of the Forum on China–Africa Cooperation Beijing Action Plan (2007–2009) adopted at the Beijing Summit. They reiterated their firm goal of further developing the new type of China–Africa strategic partnership.

1.4 In keeping with the purposes of deepening the new type of China–Africa strategic partnership to seek sustainable development, and in order to implement the outcomes of the conference and chart the course for cooperation in all fields in the next three years, the two sides jointly worked out and adopted this Action Plan.

## **2. POLITICAL AFFAIRS, AND REGIONAL PEACE AND SECURITY**

### **2.1 High-level Exchanges**

The two sides noted that since the FOCAC Beijing Summit, there have been more frequent exchanges of visits and meetings on multilateral occasions between leaders of the two sides. The two sides agreed to maintain the momentum of high-level exchanges with a view to increasing mutual understanding and friendship, and deepening mutual trust and cooperation.

### **2.2 Dialogues and Communication in Various Forms**

2.2.1 Recognizing the importance of increasingly diverse dialogue mechanisms to the deepening of the new type of China–Africa strategic partnership, the two sides resolved to give full play to the existing mechanisms, such as the bilateral commissions, strategic dialogues, foreign ministries' political consultations, and joint/mixed commissions on economic and trade cooperation, so as to enhance planning and guidance for the relations between the two sides.

2.2.2 The two sides appreciated the smooth launch of the mechanism of regular political dialogue between foreign ministers of the two sides set up at the Beijing Summit and the success of its first round. The two sides agreed to hold, under this mechanism, the second round in 2010 on the sidelines of the United Nations General Assembly.

### **2.3 Contacts Between Political Parties, Legislatures and Local Governments**

2.3.1 The two sides will further strengthen exchanges between political parties and enhance experience sharing on governance.

2.3.2 The two sides will continue to expand friendly contacts between the National People's Congress of China and parliaments of African countries as well as the Pan-African Parliament to promote mutual understanding and deepen their relations.

2.3.3 The two sides noted that increasingly active local exchanges have become an integral part of China–Africa relations. They resolved to further promote exchanges and cooperation between governments at provincial and other local levels and to actively support twinning arrangements between the two sides.

### **2.4 Consular and Judicial Cooperation**

2.4.1 Recognizing the need to strengthen personnel exchanges, the two sides agreed to increase co-operation in handling consular cases concerning their citizens in a proper and timely manner.

2.4.2 The two sides agreed to further promote exchanges and co-operation between their respective judiciaries and law enforcement departments, and to jointly improve the capability to prevent, investigate and combat crimes. The two sides also agreed to intensify co-operation between their immigration authorities to resolve the issue of illegal migration through consultation.

2.4.3 Noting the importance of legal exchanges, the two sides agreed to hold a FOCAC Legal Forum at an appropriate time.

## **2.5 Cooperation Between China and the African Union and Sub-regional Organizations in Africa**

2.5.1 The two sides applauded the important contributions made by the African Union (AU) and sub-regional organizations in Africa to actively resolving African issues and promoting the African integration process as well as sub-regional economic integration and peace and development in Africa.

2.5.2 The two sides noted with satisfaction that China and the AU have set up and launched the Strategic Dialogue Mechanism and agreed to exchange views on China–Africa relations and other major issues through this mechanism. They support the AU in playing a bigger role in regional and international affairs.

2.5.3 To facilitate the development of relations, China expressed welcome to the establishment of an AU representative office in Beijing at an appropriate time.

2.5.4 The two sides noted that the FOCAC and the New Partnership for Africa's Development (NEPAD) share the objective of promoting peace and development in Africa, and agreed to continue exploring flexible and practical ways to enhance exchanges and cooperation between the two mechanisms.

2.5.5 The Government of China will reinforce its partnership with African regional organizations in the field of institutional capacity building necessary to conceive and execute regional projects.

2.5.6 To support African countries in their efforts to strengthen themselves through unity, China will enhance dialogues and exchanges with sub-regional organizations in Africa to exchange views with them on ways to better promote African integration and enhance cooperation between the two sides, and to actively explore the possibility of cooperation under the FOCAC framework.

## **2.6 Cooperation in the Fields of Peace and Security**

2.6.1 The Chinese Government will continue to support the United Nations Security Council in playing a constructive role in solving conflicts in Africa and continue to support and participate in UN peacekeeping missions there. It will strengthen cooperation with countries concerned in the UN Peace Building Commission and support countries in their post-war reconstruction processes.

2.6.2 The Chinese Government appreciates the concept and practice of "Solving African Problems by Africans." It will continue to support the efforts of the AU, other regional organizations and countries concerned to solve regional conflicts, and will intensify cooperation with African countries in peacekeeping theory research, peacekeeping training and exchanges and in supporting the building of peacekeeping capacity in Africa.

2.6.3 The African side expressed appreciation of the appointment of the Special Representative for African Affairs by the Chinese Government, as well as China's efforts to enhance communication and dialogue with African countries in peace and security affairs and its active participation in efforts to resolve issues of instability and insecurity in Africa.

2.6.4 The African side welcomed China's counter-piracy efforts in the Gulf of Aden and off the coast of Somalia in line with the spirit of relevant UN Security Council resolutions, which the two sides believed are conducive to security of the shipping routes in the waters concerned and peace and security in the region.

### 3. COOPERATION IN INTERNATIONAL AFFAIRS

3.1 The two sides expressed the view that the international situation is undergoing the most profound changes and adjustment after the end of the Cold War. The international financial crisis has led to a world economic recession and has brought about profound and complex changes to the international political and economic landscape. Therefore, it is of even greater importance to strengthen China–Africa cooperation in international affairs.

3.2 The two sides reaffirmed that Africa should be fully represented in the arrangements related to the world economy. The African side stressed the urgent need to enlarge the G20 and other existing mechanisms for international economy. The Chinese side expressed its full understanding for this request and stressed that existing mechanisms for international economic order must be balanced to ensure the fair representation of Africa.

3.3.1 The two sides reaffirmed their respect for the Charter of the United Nations, the Five Principles of Peaceful Coexistence and other universally recognized norms governing international relations.

3.3.2 The two sides will work together to uphold the important role of the United Nations in international affairs and promote multilateralism and democracy in international relations.

3.3.3 The two sides supported reform aimed at improving the authority and efficiency of the United Nations. Such reform should be based on democratic consultations and be conducive to upholding solidarity among member states, and should fully accommodate the concerns of developing countries.

3.3.4 The two sides reiterated that developing countries should play a greater role in the United Nations, including its Security Council, and priority must be given to increasing the representation of developing countries, particularly African countries, in the Security Council.

3.3.5 The two sides stand for reforms in the international financial system, and will work to increase the representation and say of developing countries and build an international financial system that is fair, just, inclusive and orderly.

3.4 The two sides noted that achieving the Millennium Development Goals (MDGs) remains an urgent and arduous task. The two sides hold that the current international financial crisis has made the realization of the MDGs more difficult, particularly for African countries which face bigger challenges. The two sides call on the international community, developed countries in particular, to promptly deliver their pledges of assistance and debt relief, continue to step up assistance and investment, and help African countries in particular to overcome the difficulties and realize the MDGs at an early date. China will exert its effort in this regard.

3.5 In tackling climate change, the United Nations Framework Convention on Climate Change and its Kyoto Protocol should be taken as the main channel, and the mandate of the “Bali Roadmap” should be observed. Efforts should be made to seek a comprehensive solution within the framework of sustainable development. The international community should make active efforts to tackle climate change under the principle of “common but differentiated responsibilities.” China recognized the urgent need of African countries to enhance their capacity to adapt to climate change, took note of the vulnerability of small island nations and the states of river deltas prone to flooding, and stressed that combating climate change is not an excuse to reduce attention to Africa’s development. China supports Africa’s legitimate demands, including those for more financial support and necessary technological transfer from developed countries to Africa. China stands ready to strengthen cooperation with Africa in tackling climate change.

3.6 The two sides will further coordinate position and continue to work for a successful conclusion of the Doha round negotiations within 2010 on the basis of respecting the negotiation mandate of the Doha development agenda and locking in the progress already made. The negotiations must address the concerns of developing countries, particularly least developed countries, in real earnest and realize the Development Round’s goals. The

negotiations should also address the specific concerns of Small and Vulnerable Economies to facilitate their full integration into the multilateral trading system.

3.7 The two sides reaffirmed their respect for the principle of universality of human rights, with no prejudice to the cultural and social particularities with regard to perceiving and applying the concept, and with priority on the right to development. The two sides oppose politicization and double standards in the field of human rights.

3.8 The two sides condemned terrorism in all its forms and manifestations. The international community should make every effort to combat terrorism in accordance with the Charter of the United Nations and other universally recognized international law and norms governing international relations. The two sides will strengthen counter-terrorism cooperation in order to safeguard their own national security and promote new progress in international counter-terrorism cooperation.

## **4. ECONOMIC COOPERATION**

### **4.1 Agriculture and Food Security**

4.1.1 The two sides commended Africa's efforts in embracing a growth-oriented agricultural agenda through the Comprehensive African Agricultural Development Program (CAADP) aimed at increasing agricultural growth rates.

4.1.2 The two sides noted that food security is a major challenge facing the international community and it is particularly serious for African countries. Agricultural development holds the key to food security in Africa, and is essential for Africa's endeavor to eradicate poverty, ensure people's livelihood and develop the economy. The two sides decided to prioritize agriculture and food security in their cooperation.

4.1.3 The two sides were pleased to see the deepened and orderly growth of agricultural cooperation between China and Africa. They pledged to maintain and strengthen such cooperation and expand, in particular, cooperation in agricultural infrastructure, grain production, breeding industry, exchanges and transfer of practical agricultural technologies, and in processing, storage and transportation of agricultural products.

4.1.4 The Chinese Government offered to do the following:

- In the course of the next three years, send 50 agricultural technology teams to Africa and help train 2,000 agricultural technicians for African countries.
- In the course of the next three years, increase to 20 the total number of agricultural technology demonstration centers built for African countries.
- Continue to run well the agricultural technology demonstration centers already built. The centers will start to carry out experiments, demonstration projects, and training programs in crop seed selection, farming, fish breeding and animal raising.
- Implement the decision to contribute US\$30 million to the United Nations Food and Agriculture Organization (UNFAO) to set up a trust fund, and actively use the trust fund to support South-South cooperation between China and African countries under the framework of the UNFAO Special Program for Food Security.

### **4.2 Investment and Business Cooperation**

4.2.1 The two sides took note of the continued growth of two-way investment between China and Africa after the Beijing Summit in 2006, especially the fast growth of Chinese investment in Africa. The African side welcomes investment from China, and acknowledges its important role in bolstering local economic growth and sustainable development.

4.2.2 The two sides will continue to promote the conclusion and implementation of bilateral agreements on investment promotion and protection, and create a sound environment with a view to scaling up mutual investment. Governments of China and African countries give encouragement and support to their competitive businesses in investing in each other's country so as to raise the level and quality of cooperation for mutual benefit and win-win results.

4.2.3 The Chinese side offered to increase the size of the China-Africa Development Fund to US\$3 billion to support the expansion of investment from Chinese businesses to Africa.

4.2.4 The two sides will continue to do a good job in establishing overseas business cooperation zones in Africa, intensify efforts to attract investment, actively encourage more Chinese companies to make investment in the cooperation zones, and provide facilitation to African small- and medium-sized enterprises (SMEs) to develop their business in the zones.

4.2.5 Noting the outcomes of the China-Africa Business Conference held during this Ministerial Conference, the two sides will further encourage their business communities to strengthen cooperation and deepen economic and trade links.

### **4.3 Infrastructure**

4.3.1 The two sides were of the view that underdeveloped infrastructure is an obstacle to Africa's development and integration. China's contribution to infrastructure development in Africa in recent years was appreciated.

4.3.2 The two sides agreed that infrastructure will remain a priority in China-Africa cooperation. In this context, the African side hopes that the Chinese side will support development projects that promote regional integration. Recognizing Africa's urgent need for infrastructure development, the Chinese side will support the building of major infrastructure projects in Africa to promote Africa's economic and social development.

4.3.3 The Chinese side will increase investment and play a larger role in infrastructure development in Africa through providing loans and free assistance to African countries and encouraging investment by Chinese companies. In the next three years, the Chinese side will provide US\$10 billion of preferential loans to African countries, which will be used mainly to support infrastructure and social development projects.

### **4.4 Trade**

4.4.1 The two sides will continue to promote trade between China and Africa, and broaden their economic cooperation, which is currently dominated by trade in goods, so that it becomes multi-pronged to include trade in goods, investment, trade in services, technology and project contracting.

4.4.2 The two sides were pleased to see the smooth implementation of the tariff exemption policy toward Africa, which has generated increasing benefits to the countries concerned. The two sides will continue to improve China-Africa trade mix and promote trade balance.

4.4.3 The Chinese side promised to further open its market to African countries. It offered to, in a phased manner, grant tariff exemption treatment to 95 per cent of exports from the least developed countries (LDCs) in Africa having diplomatic relations with China. As the first step, the goal of zero tariff treatment for 60 per cent of products originating therefrom will be met in 2010.

4.4.4 The two sides agreed to further enhance co-operation in customs, taxation, inspection and quarantine, and to conclude and implement relevant co-operation agreements for the sound development of China-Africa trade. China is ready to establish co-operation mechanisms with African countries on the supervision and administration of imports and exports and strengthen regulation of product quality and food safety in imports and exports to the benefit of consumers in China and Africa.



4.4.5 An African commodities trade center will be established in China and preferential policies such as fees reduction and wavering will be adopted for participating African enterprises to promote export of African commodities to China.

4.4.6 The Chinese side will establish three to five logistic centers in Africa to help improve business facilities in African countries.

4.4.7 The two sides agreed to properly handle trade differences and frictions through friendly consultation under the principle of mutual understanding and mutual accommodation.

4.4.8 The two sides agreed to encourage the usage of national and regional arbitration organs in resolving contractual conflicts between Chinese and African enterprises.

#### **4.5 Finance and Banking Sector**

4.5.1 The two sides will continue to step up cooperation between relevant Chinese financial institutions and African financial institutions in support of African regional economic integration.

4.5.2 The two sides will encourage business exchanges between the commercial banks of the two sides and the opening of branches in each other's country on mutually beneficial commercial terms so as to provide financing support to major China-Africa economic and trade cooperation projects and create a favorable financial environment for China-Africa economic and trade cooperation.

4.5.3 The Chinese side supported the establishment by Chinese financial institutions of a special loan of US\$1 billion for African SMEs development to help the growth of African SMEs.

#### **4.6 Energy and Resources Cooperation**

China and Africa enjoy complementarity and cooperation potential in energy and resources. China will continue to cooperate with Africa, in keeping with the principles of mutual benefit and sustainable development, and try to raise the added value of the energy and resources products of African countries and enhance their capacity for intensive processing.

#### **4.7 Information and Communications**

China will further enhance cooperation with the information and communications authorities of African countries. It will step up training for African personnel in this field and give encouragement and support to competitive Chinese information and communications companies in getting involved in the building of communications infrastructure in Africa and engaging in mutually beneficial cooperation with African counterparts.

#### **4.8 Services Sector**

The two sides took note of the increasing role of the services sector in boosting the economy, and agreed to intensify exchanges and cooperation in this field with a view to improving the economic and industrial structures and transforming the growth pattern.

#### **4.9 Transportation**

In view of the deepening cooperation and exchanges between China and Africa, and their huge potential in transportation development, the two sides agreed to continue to encourage and support more flights and shipping links to be set up by their airlines and shipping companies.

## **5. COOPERATION IN THE FIELD OF DEVELOPMENT**

### **5.1 Assistance and Debt Relief**

5.1.1 Africa appreciated the development assistance China has provided to Africa in diverse forms over a long period of time and the reduction and cancelling of debts for Africa. Africa took note of the remarkable strengthening of relevant measures following the Beijing Summit, which is conducive to the early realization of the MDGs in Africa.

5.1.2 Despite its own difficulties caused by the impact of the global financial crisis on the Chinese economy, China expressed commitment to further scaling up assistance to Africa, and prioritizing cooperation areas concerning people's well-being, such as agriculture, infrastructure, public health, education, human resources development, clean energy and environmental protection.

5.1.3 The Chinese Government offered to cancel due debts of interest-free government loans that will mature by the end of 2009 owed by all heavily-indebted poor countries and the LDCs in Africa having diplomatic relations with China.

### **5.2 Human Resources Development**

5.2.1 The two sides noted with satisfaction that with the joint efforts of the two sides, the scholarships, seminars and training programs China had sponsored made an important contribution to the human resources development of Africa.

5.2.2 The Chinese Government will continue to provide training for people from different sectors in Africa as the need arises, and pay special attention to raising the quality of such training. The Chinese Government undertakes to train a total of 20,000 people in various sectors for African countries in the next three years.

5.2.3 The Chinese side will make a US\$1.5 million contribution to support NEPAD's projects to train nurses and maternity assistants in Africa.

5.2.4 The African side undertakes to provide necessary support in the selection of trainees and logistics.

### **5.3 Education**

5.3.1 The two sides expressed satisfaction with the continued progress in China-Africa education cooperation in recent years. The two sides stressed that better education is the basis of and holds the key to social stability and economic development, and the two sides will build on the existing achievements to further enhance their cooperation.

5.3.2 The Chinese Government offered to:

- Help African countries to build 50 China-Africa friendship schools in the next three years.
- Propose implementation of the 20+20 Cooperation Plan for Chinese and African Institutions of Higher Education to establish a new type of one-to-one inter-institutional cooperation model between 20 Chinese universities (or vocational colleges) and 20 African universities (or vocational colleges).
- Admit 200 middle and high level African administrative personnel to MPA programs in China in the next three years.
- Continue to raise the number of Chinese governmental scholarships and increase the number of scholarships offered to Africa to 5,500 by 2012.
- Intensify efforts to train teachers for primary, secondary and vocational schools in Africa, and help African countries train 1,500 school headmasters and teachers over the next three years.
- Continue to promote the development of Confucius institutes, increase the number of scholarships offered to Chinese language teachers to help them study in China, and double efforts to raise capacity of local African teachers to teach the Chinese language.

#### 5.4 Cooperation in Science and Technology and Technology Transfer

5.4.1 The two sides agreed to hold a FOCAC Science and Technology Forum in due course and proposed to launch the China–Africa Science and Technology Partnership Plan to help African countries develop their own science and technology capacity.

The Chinese side will carry out 100 joint research and demonstration projects in the next three years.

The Chinese side will invite 100 African postdocs to conduct scientific research[] in China.

The Chinese side will offer research instruments to all African scientific researchers who return to their home countries to work upon completion of their long-term joint research tasks in China.

5.4.2 To present African countries with China's recent science and technology achievements in high, new and practical technologies, China will co-host with Egypt the China Exhibition on Innovative Technology and Products in Cairo in early December 2009.

5.4.3 Noting the important role of technology transfer in enhancing African countries' capacity-building, China will encourage and promote technology transfer to Africa in various cooperation areas, in particular, the transfer of advanced applicable technologies with a major impact on Africa's economic and social development, such as technologies for drinking water, agriculture, clean energy and health.

#### 5.5 Cooperation in Poverty Reduction

5.5.1 Recognizing that poverty eradication is an arduous task for both sides, and noting Africa's pressing need to accelerate the poverty reduction process, the two sides will step up cooperation and exchanges in this field.

5.5.2 China will continue to share experience in poverty reduction with African countries through seminars and training sessions in order to jointly raise development capacity and make poverty alleviation efforts more effective.

#### 5.6 Medical Care and Public Health

5.6.1 The two sides agreed on the importance of strengthening health systems in Africa and improving its abilities to tackle the major challenge of diseases.

5.6.2 The two sides noted with pleasure the deepening health cooperation between the two sides. In particular, the hospitals and anti-malaria centers that China has undertaken to build will play a positive role in improving the health care level and protecting people's health in African countries.

5.6.3 The two sides will step up exchanges, particularly their joint efforts to prevent and treat major communicable diseases like HIV/AIDS, malaria, tuberculosis, avian influenza and influenza A (H1N1). The two sides will continue to enhance cooperation in setting up mechanisms to handle public health emergencies.

5.6.4 The Chinese Government offered to:

- Provide CNY500 million worth of medical equipment and malaria-fighting materials to 30 hospitals and 30 malaria prevention and treatment centers built by China for Africa in the coming three years. China will invite African professionals working in malaria prevention and treatment centers to training programs in China in an effort to ensure sustainable development of the project.
- Continue to help relevant African countries train a total of 3,000 doctors, nurses and administrative personnel over the next three years.
- Continue to do a good job in sending medical teams to Africa.

### 5.7 Climate Change and Environmental Protection

5.7.1 The two sides noted the positive measures adopted by both sides to jointly tackle climate change. China had organized seminars and training programs on climate change, forest resources cultivation, the use of new energy, environmental management and pollution prevention and control for African countries.

5.7.2 To help African countries adapt to climate change and strengthen environmental protection, China will step up human resources training for African countries and expand bilateral exchanges and cooperation in the above-mentioned fields.

5.7.3 The two sides proposed the establishment of a China-Africa partnership in addressing climate change and the holding of [consultations among senior officials] on a non-regular basis. The Chinese Government offered to assist African countries with 100 small-sized well digging projects for water supply and clean energy projects of biogas, solar energy and small hydro-power plants in the next three years.

5.7.4 China is ready to advance cooperation with African countries in environment surveillance, continue to share with African countries data from the China-Brazil Earth Resources Satellite and promote the application of the data in land use, weather monitoring and environmental protection in Africa.

5.7.5 China will help African countries better protect the ecosystem and biodiversity and improve the comprehensive treatment of desertified areas and the relevant surveillance capacity.

### 5.8 Disaster Reduction and Relief

5.8.1 The two sides recognized that enhanced cooperation in disaster reduction and relief is an effective means for the two sides to build capacity for preventing natural disasters, eradicating poverty and maintaining sustainable social development. They expressed satisfaction with the sound cooperation between the two sides in the relevant areas. China expressed gratitude to African countries for their support and all forms of assistance in the wake of the devastating Wenchuan earthquake.

5.8.2 China will be glad to share experience with African countries in reducing drought risks, and will send experts to Africa in due course to disseminate technologies and promote their application. China plans to co-sponsor, together with the United Nations International Strategy for Disaster Reduction, a China-Africa international seminar on reducing drought risks in Africa in 2010.

5.8.3 China will strengthen exchanges and cooperation with African countries in surveillance and prevention of earthquake and other disasters as well as technical training in those areas.

### 5.9 Tourism

5.9.1 The two sides noted the recent good progress made in China-Africa tourism cooperation, the growing number of tourists and, in particular, the remarkable increase in Chinese tourists visiting Africa. African countries welcome this increase and will encourage their citizens to travel to China.

5.9.2 The two sides noted that developing tourism is an effective way to promote national economic growth and cultural exchanges. They will take concrete steps to make travel both ways more convenient. In response to Africa's request, the Chinese Government will add more eligible African countries to the list of the Approved Destination Status (ADS) for Chinese tourists.

5.9.3 The Chinese side reaffirmed its support to Chinese enterprises' investment in the tourism sector in Africa, and to greater efforts to promote African tourist destinations.

## 6. CULTURAL AND PEOPLE-TO-PEOPLE EXCHANGES AND COOPERATION

### 6.1 Culture

6.1.1 The two sides noted with satisfaction that China-Africa cultural exchanges and cooperation have kept expanding with fruitful results in recent years. Recognizing the splendid histories and cultures of both China and Africa, the two sides agreed to strengthen cultural exchanges and mutual learning to help advance dialogue and exchanges among different civilizations.

6.1.2 The two sides agreed to remain committed to China-Africa cultural exchanges and cooperation, and decided to:

- Hold the FOCAC Culture Forum in due course, and strengthen regular consultations between government cultural departments of the two sides.
- Continue to follow through on projects under the implementation plan of the China-Africa bilateral government cultural agreements, and conduct mid-term assessment on their implementation.
- Work together to promote “Cultures in Focus” events in China-Africa cultural exchanges. “African Culture in Focus” events will be held in even number years in China and “Chinese Culture in Focus” in odd number years in Africa.
- Faithfully implement the China-Africa exchange of visits program in the cultural field, and strengthen exchanges and cooperation between cultural and art authorities and professionals of the two sides.
- Strengthen cooperation and build more Chinese cultural centers in Africa to facilitate regular cultural exchanges, public understanding and research.
- Promote cultures of the two sides through new technologies such as the internet to increase mutual understanding.

### 6.2 Press

6.2.1 The two sides will continue to strengthen exchanges and cooperation between press departments of the Chinese and African governments, and support the annual press workshop for African officials.

6.2.2 The two sides will promote mutual visits between Chinese and African press department officials, editors and journalists, support the posting of journalists to each other’s country by news organizations of the two sides, and encourage news media of the two sides to step up objective and fair coverage on China and Africa.

6.2.3 The two sides will increase cooperation in radio and television program production by conducting exchanges at various levels and in various forms.

### 6.3 Exchanges Between Academia and Think Tanks

6.3.1 The two sides noted that dynamic exchanges between academia and think tanks are instrumental in increasing mutual understanding between the peoples.

6.3.2 The two sides proposed to implement a China-Africa joint research and exchange plan to strengthen cooperation and exchanges between scholars and think tanks of the two sides through a variety of ways, such as seminars, mutual academic visits, and joint research projects.

### 6.4 People-to-People, Youth and Women Exchanges

6.4.1 The two sides noted that people-to-people exchanges are conducive to mutual understanding and important to the deepening of China-Africa friendship. The two sides remain committed to promoting people-to-people exchanges.

6.4.2 The two sides held that more China–Africa youth exchanges provided a new impetus to China–Africa traditional friendship and met the needs of both sides. The two sides expressed satisfaction with the active youth exchanges after the Beijing Summit.

6.4.3 The two sides resolved to continue to increase dialogue and exchanges between the younger generations, and advance practical cooperation between youth organizations and young people in youth affairs, social development, culture, sports, and volunteer service.

6.4.4 The two sides support the Tunisian initiative, proposing the year 2010 as the “International Year of the Youth” as well as the organization of an international conference for the youth that will be convened under the auspices of the UN and other relevant international organizations.

6.4.5 Noting the results of the FOCAC Women’s Forum held in Cairo and the release of the FOCAC Women’s Forum Declaration 2009, the two sides held that the forum helped to enhance the role of women in promoting economic and social development and enriched China–Africa traditional friendship.

6.4.6 The two sides recognized the importance of promoting gender equality and the status of women, and resolved to strengthen exchanges and cooperation between Chinese and African women in multiple forms, such as seminars and technical training.

## **6.5 Sports**

6.5.1 China appreciated African countries’ active support for and participation in the Beijing Olympic Games in 2008. The two sides agreed to further increase sports exchanges and cooperation.

6.5.2 China fully supports the Africa Cup of Nations, scheduled for January 2010 in Angola, as well as the 2010 FIFA World Cup, to be hosted by Africa for the first time, and wishes both events complete success.

## **6.6 World Expo**

China expressed appreciation to African countries’ active participation in World Expo 2010 Shanghai. China offered due support to African countries in their participation with a view to fully showcasing Africa’s economic development, progress, opportunities, culture and to promoting a better understanding of Africa in the world. African countries appreciated this and wished the Shanghai Expo a complete success.

## **7. FOCAC**

7.1 The two sides noted with satisfaction that since the establishment of FOCAC in 2000, follow-up mechanisms and procedures have been introduced such as the Ministerial Conference, the regular political dialogue between Chinese and African foreign ministers, the Senior Officials Meeting (SOM), and consultations between African diplomatic missions in China and the Secretariat of the Chinese Follow-up Committee. The two sides agreed that FOCAC has become an important platform for collective dialogue and an effective mechanism of practical cooperation between China and Africa.

7.2 The two sides recognized the need to further strengthen FOCAC as China–Africa relations continue to expand and deepen. The two sides give encouragement and support to relevant departments in China and Africa in holding sub-forums within the FOCAC framework in order to boost cooperation between functional departments of the two sides.

7.3 Following the FOCAC follow-up mechanism procedures, the two sides decided to hold the Fifth Ministerial Conference in 2012, and the 8th SOM in 2011, both to be held in China.

#### **74. Eight-Point Plan China Pledged at the Fourth Ministerial Conference of the Forum on China Africa Cooperation (November 2009)**

Retrieved from [http://www.china.org.cn/government/whitepaper/2011-04/21/content\\_22411894.htm](http://www.china.org.cn/government/whitepaper/2011-04/21/content_22411894.htm)

*The New Eight-Point Plan China Pledged at the Fourth FOCAC Ministerial Conference (November 2009)*

1. China proposes the establishment of a China–Africa partnership in addressing climate change and the holding of senior official consultations on a non-regular basis, and strengthening of cooperation in satellite weather monitoring, development and use of new energy, prevention and control of desertification, and urban environmental protection. The Chinese government decides to assist African countries with 100 clean energy projects in the fields of solar energy, bio-gas and small hydropower stations.
2. To intensify cooperation in science and technology, China proposes to launch the China–Africa Science and Technology Partnership Plan, carry out 100 joint research demonstration projects, invite 100 African post-doctoral students to conduct scientific research in China and subsidize them when they return to their home countries to work.
3. In order to improve African countries' capacity in financing, the Chinese government will provide US\$10 billion in concessional loans to African countries. China supports the establishment by Chinese financial institutions of a special loan of US\$1 billion for the development of small and medium[-sized] enterprises (SMEs) in Africa. The Chinese government will cancel debts of interest-free government loans that mature by the end of 2009 owed by all HPCs and the LDCs in Africa having diplomatic relations with China.
4. China will further open its market to African countries. It will gradually give zero-tariff treatment to 95 per cent of exports from the LDCs in Africa having diplomatic relations with China. As the first step, China grants zero-tariff treatment to 60 per cent of the exported commodities from those countries in 2010.
5. In order to further strengthen agricultural cooperation and improve African countries' capacity for food security, China will increase to 20 the total number of agro-technology demonstration centers built for African countries, send 50 agro-technology teams to Africa and help train 2,000 agro-technicians for African countries.
6. China will continue to deepen China–Africa cooperation in medical care and public health service[s]. It will provide 500 million yuan worth of medical equipment and malaria-fighting materials to 30 hospitals and 30 malaria prevention and treatment centers which have been built with China's assistance, and help African countries train a total of 3,000 doctors and nurses.
7. In order to further enhance cooperation in human resource development and education, China will help African countries to build 50 China–Africa friendship schools and train 1,500 school principals and teachers; increase the number of Chinese government scholarships for African students to 5,500 by 2012; and train a total of 20,000 professionals in various sectors for African countries in the next three years.
8. To enlarge people-to-people exchanges, China proposes to implement a China–Africa Joint Research and Exchange Plan to strengthen cooperation and exchanges between scholars and think tanks, which will also provide intellectual support for better policy-making regarding cooperation between the two sides.

### **75. Interpretation of New Measures on Economic and Trade Cooperation from 4th Ministerial Conference of the Forum on China-Africa Cooperation (MOFCOM, May 2010)**

Retrieved from <http://www.focac.org/eng/ltda/dsjbjzjhy/hxxd/t696509.htm>

By China Ministry of Commerce, Department of Western Asian and African Affairs

Updated: 2010-05-05

In November 2009, at the 4th Ministerial Conference of Forum on China-Africa Cooperation, Chinese Premier Wen Jiabao, on behalf of the Chinese government, announced eight new measures to promote practical cooperation with Africa. During the conference, China and Africa also passed the Sharm El Sheikh Action Plan (2010-2012), mapping out a comprehensive plan for the next three years of cooperation. According to the commitments made by China at the conference, in the next three years in the area of economic and trade cooperation, China will implement eight new measures in: agriculture and food production; medical care, public health, prevention and treatment of major diseases; education, training and academic exchanges; clean energy and clean drinking water; loans; trade promotion; debt exemption; and investment expansion.

These new measures are the major initiatives by Chinese government to advance the comprehensive development of the new type of China-Africa strategic partnership under the new circumstances. They serve to highlight that China highly values the traditional friendly relations with Africa, and that China has the goodwill to further cooperation based on equality and mutual benefit, and build a harmonious world of enduring peace and common prosperity.

China, along with Africa, will diligently implement all the actions in the new measures of economic and trade cooperation, deepen practical cooperation, and join hands to tackle the challenges of financial crisis and climate change; China will help Africa to continually improve infrastructure, and solidify the foundation for economic and social development; China will support Africa to reduce poverty, enhance agriculture, education and health care levels, and improve the livelihood of the African people; China will expand cooperation effort on human resources development, and strive to train technical and management personnel who are urgently needed for African economic and social development.

**Measure #1:** To strengthen agricultural exchanges and cooperation, help Africa to increase food production capacity; to increase the number of agricultural technology demonstration centres built by China in Africa to 20, and send 50 agricultural technology teams to Africa.

**Measure Interpreted:** Agriculture is the pillar industry and priority development area for most African countries. Food security is also the foundation for sustainable development and poverty reduction in Africa. China has always put a strong emphasis on agricultural cooperation with Africa. Based on the needs of each African country, China takes full advantage of its strength in agricultural technology, personnel and capital to help African countries accelerate agricultural development and achieve the basic goals of food self-sufficiency and poverty reduction, through transfer and dissemination of advanced agricultural production management expertise and applicable technologies. Since the Beijing Summit of Forum on China-Africa Cooperation in 2006, China has actively implemented the agricultural assistance measures announced by Chinese President Hu Jintao at the summit. Today, China has initiated 15 agricultural technology demonstration centre projects, 13 of which are already under construction. China has also sent 104 senior agricultural experts to work in 33 African countries. In the next three years, China will accelerate construction of the existing agricultural technology demonstration centre projects, and increase the total number of agricultural technology demonstration centres to 20. China will also send 50 agricultural technology teams to African to develop agricultural technology cooperation, provide consulting services for policy making and planning, develop better grain varieties, transfer and disseminate applicable agricultural technologies, and help African countries to enhance their capacity to develop agriculture and ensure food security.



**Measure #2:** To strengthen cooperation in medical care and public health, help African countries improve medical conditions, enhance capacity for malaria prevention and treatment, as well as public health protection; to provide medical equipment and anti-malaria materials worth CNY500 million to the 30 hospitals and 30 malaria prevention and treatment centers built by China.

**Measure Interpreted:** Medical care and public health has always been a key area for China–Africa cooperation. For many years, the African people suffered from malaria and other diseases. In order to help African countries improve medical conditions, enhance capacity for malaria prevention and treatment as well as public health care, in the last three years, based on the needs of Africa countries, China has carried out a series of medical and health care assistance projects, such as building 30 hospitals and 30 malaria prevention and treatment centers, and providing artemisinin medicine. China has also sent about 900 medical personnel to 42 African countries, who have performed a total of 5 million patient/diagnosis services, helping to alleviate medical resources shortage in Africa. Up to date, China has sent to Africa a total of 17,000 medical personnel. To further strengthen cooperation in medical care and public health, in the next three years, China and Africa will work together to speedily complete the hospital construction projects and bring the hospitals into service at an early date. China will continue to send medical personnel to Africa, and send visiting experts for the malaria prevention and treatment centers, and provide medical equipment and anti-malaria medicine. China will also in the next three years train 3,000 doctors and nurses for Africa. It is the hope of China that these actions will help Africa enhance its medical service and malaria prevention and treatment capacity, and ensure the existing cooperation programs can serve African people in a sustainable, progressive and enduring way.

**Measure #3:** To strengthen cooperation in education and human resources development, help African countries enhance capacity for self-development; to build 50 China–Africa friendship schools; to train 20,000 personnel for Africa, including 1,500 school headmasters and teachers, 2,000 agricultural technology personnel, 3,000 doctors and nurses; to provide US\$1.5 million in support of human resources training under New Partnership for Africa's Development (NEPAD).

**Measure Interpreted:** China highly values cooperation with Africa in education and human resources development. At the Beijing Summit, China announced the initiative to build 100 rural schools and train 15,000 personnel for Africa in the next three years. Since then, China has fulfilled its pledge by building 126 schools and improving conditions at some existing schools. This will provide schooling opportunities to 30,000 African children. China has held a total of 700 training sessions for African officials and technical personnel, covering 20 areas including economic development and trade, foreign policy, defense, public administration, medical care and public health, agriculture, fishing and animal husbandry, education, radio and television program production, science and technology, culture, environment protection, telecommunications, transportation, finance, and energy. These sessions have trained a total of 16,000 personnel by the end of 2009. To further strengthen cooperation in education and human resources development, help African countries improve capacity for self-development, in the next three years, China will build an additional 50 China–Africa friendship schools, including primary, secondary and vocational schools, with necessary furnishings and teaching equipment. China will also train 20,000 personnel in different fields for Africa, including 1,500 school headmasters and teachers, 2,000 agricultural technology personnel, 3,000 doctors and nurses. The training will focus on economic development and trade, agriculture, education, public health, environment protection, science and technology. In 2006, Chinese Premier Wen Jiabao announced during visit to South Africa that China would donate US\$500,000 to aid NEPAD's nurses and maternity assistants training program. This program has concluded smoothly and achieved satisfactory results. To bring benefits to more African women and children, China will donate another US\$1.5 million to support NEPAD's continuation of this training program.

**Measure #4:** To strengthen cooperation in clean energy development and utilization, and in clean drinking water; to help Africa enhance capacity to adapt to climate change, protect environment, and ensure drinking water safety; to build 100 small-sized well digging projects for water supply and clean energy projects of biogas, solar energy and small hydro-power plants.

**Measure Interpreted:** Environment protection and climate change have increasingly become a key global concern. In this area, Africa also faces challenges, and needs capital, technology and personnel training assistance from international community. China has accumulated some successful experiences in the areas of bio-gas, solar power, and small hydro-power plants. To alleviate the energy shortage experienced by Africa in its development process, and meet environment protection and climate change challenges, China is willing to work actively with Africa on cooperation in these fields, to transfer and disseminate proven technologies and practices from China. This will help to raise the living standard for African people, and help Africa enhance the capacity to address climate change. In addition, many African countries also face severe water shortage and drinking water safety problems. Currently, about 300 million Africans still suffer from water shortage, with more than 40 per cent [of the] people in sub-Sahara area without clean drinking water.

In order to work with Africa to address climate change, strengthen environment protection, and enhance capacity to ensure drinking water safety for African people, in the next three years, China will undertake to implement 100 small-sized well digging projects for water supply and clean energy projects of biogas, small solar energy equipment, energy-efficient lights and small hydro-power plants, based on the needs and circumstances of African countries.

**Measure #5:** To provide a variety of loans to help Africa develop economy and overcome global financial crisis; to provide Africa with US\$10 billion in concessional loans, mainly for infrastructure and social development projects; to support Chinese financial institutions in setting up a US\$1 billion special loan for African small and medium enterprises (SMEs), to help the growth of African SMEs.

**Measure Interpreted:** To implement the commitments made at the Beijing Summit, from 2007 to 2009, China has provided US\$3 billion in preferential loans and US\$2 billion in preferential buyer credits to African countries, supporting African development in areas such as transportation, housing, power generation, port, telecommunications. This effectively facilitated China-Africa win-win cooperation, promoted African economic development and received general acclaim from Africa. To further advance economic and trade exchanges, and help Africa quickly overcome the adverse impact of [the] global financial crisis, alleviate the capital shortage facing development in Africa, in the next three years, China will continue to provide preferential loans and preferential buyer credits to African countries. These loans and credits will be combined with projects, to be mainly used on infrastructure development like highway, railroad, seaport, airport, electrical power, telecommunication, and public welfare projects such as low-cost housing.

African SMEs play a key role in developing national economy, increasing local employment and maintaining social stability, thus drawing special attention from African governments. In the current context of global financial crisis, any measure that can help African SMEs to overcome their difficulties and continue to develop and expand would play a positive role in helping Africa stabilize employment, increase market activities and develop economy. From this perspective, [the] Chinese government supports China National Development Bank to set up a special loan for African SMEs. This loan, in accordance with the principle of market operation, will be used to provide financing support to African SMEs to help their development and facilitate cooperation of Chinese and African SMEs. China National Development Bank is currently studying on and formulating the relevant implementation plans.

**Measure #6:** To further advance the sound development of China–Africa trade; to phase in zero-tariff treatment to 95 per cent of the products from the least developed African countries (LDCs) having diplomatic relations with China, starting with 60 per cent of the products within 2010; to set up [an] African commodities trade center in China and adopt preferential policies such as fees reduction and wa[iv]ering for participating African enterprises to promote export of African commodities to China; to establish three to five logistic centers in Africa to help improve business facilities in African countries.

**Measure Interpreted:** In 2005, China started to grant zero-tariff treatment to some commodities of African LDCs destined for China. After the Beijing Summit in 2006, China expanded the tariff exemption list to 478 kinds of products. Since the measure went into effect, it has generated considerable benefits, advancing more than US\$1 billion worth of African exports to China. To further open market access to Africa and increase the competitiveness of African export, in the next three years, China will phase in zero-tariff treatment to 95 per cent of the products from the LDCs having diplomatic relations with China, starting with 60 per cent of the products within 2010. By the end of the three years, the tariff exemption list for African LDCs will be expanded from 478 to 4,700 kinds of products. This policy, based on China's economic strength, is a preferential treatment on a unilateral and voluntary basis, thus is in conformity with WTO rules. China and related African countries are following the proper procedures to implement this measure, to bring benefits to these countries as soon as possible.

The establishment of [an] African commodities trade center is another important step taken by China to promote African exports to China. The center will be based in the World Trade Center in Yiwu city, Zhejiang province, with a total space of 5,000 square meters. The center will focus on products with African characteristics and promote African products to Chinese and global consumers, by leveraging the platform and brand name status of the Yiwu International Small Commodities Distribution Center. The center will adopt preferential policies such as [policies for] fee[] reduction[s] and [waivers], as well as other [advantages] for participating African enterprises.

To advance the sound development of China–Africa trade and help Africa to improve business facilities, in the next three years, China will support relevant Chinese enterprises to set up three to five full-service logistic centers in Africa. The centers will attract Chinese and African enterprises to sign up and showcase their best products, and will perform logistics services accordingly.

**Measure #7:** To continue to support poverty reduction efforts by Africa; to cancel due debts of interest-free government loans that matured by the end of 2009 owed by all heavily-indebted poor countries and the LDCs in Africa having diplomatic relations with China.

**Measure Interpreted:** Since the launch of Forum of China–Africa Cooperation in 2000, China has canceled due debts of interest-free loans that matured by the end of 2005 owed by all heavily-indebted poor countries and the LDCs in Africa having diplomatic relations with China. This cancellation involved 310 debts from 35 countries. Currently, there are 38 heavily indebted poor countries and LDCs in Africa, who are still facing severe development challenges. To support these African countries to implement their poverty reduction plans and reach the United Nations Millennium Development Goals at an early date, China will continue to cancel due debts of loans owed by all heavily indebted poor countries and the LDCs in Africa having diplomatic relations with China, and complete the agreements on due debts of interest-free government loans that matured by the end of 2009, to bring debt relief to Africa.

**Measure #8:** To further fulfill the pledges made at the Beijing Summit; to increase the size of [the] China–Africa Development Fund to US\$3 billion and support Chinese enterprises to expand investment in Africa.

**Measure Interpreted:** The establishment of the China–Africa Development Fund was one of the 8 measures announced at the Beijing Summit on practical cooperation between China and Africa. Since its birth in June 2007, the China–Africa Development Fund has funded a total of 31 projects under the first tranche of US\$1 billion.

These projects in turn have attracted a total project funding of US\$4.73 billion, out of which US\$0.76 billion will be funded by the China–Africa Development Fund. To support more well-established and reputable Chinese enterprises to invest in Africa, China is pushing forward initiation of the second tranche of the Fund, to increase the size of the Fund to US\$3 billion.

## *Section Eight: Measures Relating to Foreign Exchange*<sup>10</sup>

### **76. Interim Measures for Joint Annual Inspections of Overseas Investments (MOFTEC & SAFE, October 2002)**

Source: Ministry of Commerce website. Retrieved from [http://www.fdi.gov.cn/pub/FDI\\_EN/Laws/law\\_en\\_info.jsp?docid=51872](http://www.fdi.gov.cn/pub/FDI_EN/Laws/law_en_info.jsp?docid=51872)

#### **Chapter I: General Provisions**

**Article 1** The measures are aimed to enhance the macro-control of, command the variations of, and promote the sound development of overseas investment.

**Article 2** A joint annual inspection is applied to overseas investment by the country. The Ministry of Foreign Trade and Economic Cooperation (hereinafter referred to as the “MOFTEC”) and the State Administration of Foreign Exchange (hereinafter referred to as the “SAFE”) are responsible for the formulation of annual inspection methods and relevant organization, coordination and supervision work.

**Article 3** Overseas enterprises shall accept annual inspection through their investing principals.

**Article 4** The “oversea[s] enterprises” mentioned in the Measures refer to those enterprises (except financial ones) set up by corporate legal persons (hereinafter referred to as “investing principals”) of China.

#### **Chapter II: Time, Items and Procedures of the Annual Inspection**

**Article 5** The department (commissions and bureaus) of foreign trade and economic activities of each province, autonomous region and municipalit[y] directly under the Central Government, and foreign exchange sub-branches take charge of the annual inspection of overseas investment by local enterprises. Central enterprises shall take charge of the annual inspection of their respective overseas investment, except the part concerning foreign exchange, which should be under the foreign exchange bureaus (foreign exchange administrations) of the enterprise’s location (hereinafter referred to as “annual inspection agencies”).

**Article 6** The work time for annual inspection extends from April 1 to June 15 each year.

**Article 7** items subject to annual inspection:

- I. Status of overseas investment.
- II. The appraisal of overseas enterprises by overseas business organizations of China.
- III. Observation of overseas-investment-related regulations of China by investing principals and their oversea[s] enterprises.

<sup>10</sup> See explanatory text at footnote 2.

**Article 8** Procedures of the annual inspection[:]

- I. The report of annual inspection should be co-prepared by the MOFTEC and the SAFE and ... published on the web page for downloading by domestic investing principals (for a sample see Attachment I).
- II. The downloading [must] be completed within the stipulated time and the information filled in concerning overseas enterprises should be true and valid.
- III. A copy of the finished document [must] be submitted to the departments (commissions or bureaus) of foreign trade and economic activities and foreign exchange bureaus (foreign exchange administrations).

**Chapter III: Auditing of Annual Inspection**

**Article 9** The scoring standards specified in the Measures should serve as the basis for determining the grades (1, 2 and 3) as the result of the inspection by annual inspection agencies (see Attachment II for relevant scoring standards).

**Article 10** The certificate of annual inspection uniformly printed by the country is to be sealed for this specific purpose by the annual inspection agencies upon the determin[ation] of the grade and then ... handed over to the investing principal for keeping (for a sample of the certificate see Attachment III).

**Article 11** The report (a copy) and result of annual inspection should be submitted to the MOFTEC by the annual inspection agencies before June 15. A working report on the annual inspection is to be submitted to the MOFTEC and the SAFE before June 30.

**Article 12** The MOFTEC is responsible for notifying finance, customs, taxation, foreign affairs, banking, insurance and other departments of the annual inspection results.

**Article 13** The inspection is carried out regularly each year and there shall be no other focused inspection of any form on overseas investment.

**Article 14** No fee should be charged by any department in the name of annual inspection.

**Chapter IV: Results of Annual Inspection**

**Article 15** The result is valid [for] one year [from] the day of specialized sealing for annual inspection.

**Article 16** The investing principal, after the overseas enterprise obtains the certificate in the annual inspection, should present the certificate of annual inspection to the MOFTEC and relevant departments while undergoing procedures concerning overseas investment.

**Article 17** Priority is to be given to grade 1 obtainer[s] in preferential and supportive treatment[] concerning overseas investment; priority is also to be given by concerned departments in procedures for foreign exchange, customs, taxation and cross-border movement of staff.

**Article 18** Grade 2 obtainers do not enjoy preferential or supportive treatment[].

**Article 19** Grade 3 obtainers do not enjoy preferential or supportive treatment[] and are allowed a one-year period for rectification and improvement. [A]ny new investment is forbidden within one year in case of another grade 3 at the next annual inspection.

### Chapter V: Penalty Provisions

**Article 20** The MOFTEC and relevant departments are to take the following measures for those not declaring for annual inspection:

- I. Suspend accepting applications of the investing principal for overseas-investment-related foreign exchange buying or payment and overseas guarantee.
- II. Do not accept new applications of the investing principal for setting up overseas enterprises.
- III. Do not accept applications for sending staff overseas.

**Article 21** Sampling reviews are to be performed by the MOFTEC in joint efforts with relevant departments and a time limit can be imposed on relevant agencies for rectification and improvement if the inspection results are not in accordance with the facts. The treatments provided in Article 20 should be executed in case of serious consequences.

### Chapter VI: Supplementary Provisions

**Article 22** The Measures shall serve as reference with regard to the annual inspection of domestic-invested enterprises in HK, Macao and Taiwan.

**Article 23** "Certificate of approval for overseas processing and assembling enterprises using exported materials or parts" must have the certificate of annual inspection as a precondition for its annual auditing procedures.

**Article 24** The Measures are subject to the interpretation of the MOFTEC.

**Article 25** The Measures shall enter into force as of January 1, 2003.

### **77. Circular of the State Administration of Foreign Exchange on Issues Concerning Foreign Exchange Administration of Overseas Lending Granted by Domestic Enterprises (SAFE, June 2009)**

Source: SAFE website. Retrieved from [http://www.safe.gov.cn/model\\_safe\\_en/laws\\_en/laws\\_detail\\_en.jsp?ID=306000000000000000048&type=&id=3](http://www.safe.gov.cn/model_safe_en/laws_en/laws_detail_en.jsp?ID=306000000000000000048&type=&id=3)

For the purposes of facilitating and supporting the use and operation of foreign exchange funds by domestic enterprises, improving the efficiency of fund use, broadening the follow-up financing channels of overseas enterprises, regulating the management and statistics of external claims, and promoting the go-global move of domestic enterprises, and in line with the *Regulations of the People's Republic of China on Foreign Exchange Administration* and the relevant laws and regulations, the issues concerning the foreign exchange administration of overseas lending granted by domestic enterprises are hereby notified as follows:

1. The "overseas lending" in this Circular refers to the financing mode of domestic enterprises (excluding financial institutions, hereinafter referred to as the "lenders") that directly provide lending to their wholly-owned subsidiaries or share-holding enterprises legally established abroad (hereinafter referred to as the "borrowers") in accordance with the amount, interest rate, and term as agreed upon in the contract and within the approved quota.

The overseas lending can also be made in the form of entrusted lending by designated foreign exchange banks and finance companies of enterprise groups that are established upon approval and are entitled to engage in foreign exchange businesses.

2. The local foreign exchange administration branches, also known as the foreign exchange administrative departments (hereinafter referred to as the “foreign exchange administrations”) where the lenders are located shall be responsible for the supervision and management of the following issues involved in the overseas lending including ratification of the quota, registration, the special account, and the funds exchange and transfer etc.

3. The domestic enterprises engaging in overseas lending shall comply with the relevant regulations of this Circular and other foreign exchange administration rules, and shall accept the administration, supervision, and examination of the foreign exchange administrations.

4. The practice of balanced management is adopted in engaging in overseas lending, and the domestic enterprises may, within the quota of overseas lending approved by the foreign exchange administrations, remit funds abroad either in full or in batches.

The validity of the period of the quota for overseas lending is two years from the date of obtaining approval from the foreign exchange administrations on verification of the quota. Where the lenders need to continue the use of funds after the expiry of the period of validity, the lender shall, within one month before the expiry of the period of validity, file an application for renewal with the local foreign exchange administrations.

5. The balance of the overseas lending of the lenders shall not exceed 30 per cent of the owners’ equity of the lenders, and shall not exceed the total amount of the agreed investment of the Chinese side for which the borrowers have gone through the relevant registration formalities. If any enterprise has the need to breach the aforesaid proportions, the local foreign exchange administrations where the lenders are located shall, after initial examination of the conditions, report them to the State Administration of Foreign Exchange for review.

6. The lenders may engage in overseas lending to borrowers with self-owned foreign exchange funds, foreign exchange funds purchased with RMB, and funds in the foreign currency funds pool as approved by the foreign exchange administrations.

7. The lenders and borrowers shall comply with the following requirements:

(1) Both the lenders and the borrowers shall be registered and established according to the law, and the registered capital of the lenders and the borrowers shall be put in place in full;

(2) Both the lenders and the borrowers shall have a track record of continuous and sound operations, have a solid financial system and internal control system, and have not violated the foreign exchange regulations in the past three years;

(3) All overseas direct investment made by the lenders in the past years shall have been approved by the domestic authority in charge of overseas investments and shall have gone through the registration formalities in the foreign exchange administrations, and the lenders shall be rated as Grade Two or above in the latest joint annual inspection of overseas investment (with the exception of enterprises that have been established for less than one year); and

(4) As for those lenders that have already engaged in overseas lending, the previous overseas lending thereof shall have operated well, and they shall not have violated any regulations.

8. The lenders shall apply for the handling of the overseas lending business with the local foreign exchange administrations by submitting the following materials:

(1) A written application, with content including but not limited to: basic information about the lenders, basic conditions of the overseas enterprises, amount of overseas lending, sources of funds and a commitment letter for overseas lending (the content of the commitment letter shall include: the purposes of the overseas lending in conformity with the relevant laws and regulations of China and the countries or regions where the

lenders are located; the lenders shall collect the principal and interest of the lending in a timely manner and in line with the agreement of the contract; the lenders shall transfer back the funds lent overseas in accordance with the requirements of the State Administration of Foreign Exchange in a timely manner when the balance of payments of China is severely affected, etc.).

(2) The lending agreement signed by the lenders and the borrowers or the entrusted lending agreement signed by the lenders, the borrowers, and the designated domestic foreign exchange banks or finance companies under entrustment shall make clear the following items including the amount, interest rate, term, guarantee mode, mode of payment of the principal and interest of the lending, etc.

(3) Explanations of the conditions, such as the financial audit report of the lenders for the latest period (if the lenders are foreign-invested enterprises, the lenders shall have undergone a joint annual inspection of foreign-invested enterprises for two consecutive years, and shall provide the foreign exchange registration certificate and the sheet of foreign exchange receipts and payments of the previous year for the foreign-invested enterprises), the business license with the annual examination, explanations on the use and repayment of previous overseas lending; if the lenders plan to offer lending with self-owned foreign exchange funds, such lenders shall submit the reconciliation statements of the foreign exchange account up to the end of the previous month of the application filing date; if the lenders plan to purchase foreign exchange for overseas lending, the lenders shall demonstrate the amount of foreign exchange to be purchased;

(4) The foreign exchange registration certificate for overseas investment and the financial audit report for the latest period of the lenders;

(5) Other supplementary materials as required by the foreign exchange administrations.

The local foreign exchange administrations where the lenders are located shall, within 20 days after receiving the complete application materials and having audited them to be correct, make a decision to reply or not to reply; If a reply is made, the quota for the overseas lending shall be checked and ratified.

9. The lenders, after obtaining the quota for overseas lending as checked and ratified by the foreign exchange administrations, may directly apply to open a special account for overseas lending with the designated foreign exchange banks upon the strength of the approval document for overseas lending. If the lenders shall engage in more than one overseas loan, such lenders may uniformly open a single overseas lending special account and transfer the relevant funds through the account.

Where the lenders need to write-off an overseas lending special account, the lenders may apply to write-off the overseas loan special account with the designated foreign exchange banks upon the strength of the approval documents for the overseas lending and the relevant warrants concerning the withdrawal of funds lent, etc.

All the overseas lending funds must be remitted outwards through the overseas lending special accounts, and the principal and interest funds must be remitted back to the overseas lending special accounts.

10. The scope of the receipts of the overseas lending special accounts includes: foreign exchange funds transferred inwards from the foreign exchange capital account or the foreign exchange account under the current account of the lenders; foreign exchange funds transferred inwards from the foreign currency funds pool account of the lenders, which have been approved by the foreign exchange administrations; foreign exchange funds purchased for overseas lending; principal and interest for the loan received back from the overseas borrowers; performance guaranty funds paid by the guarantor of the overseas debt.

The scope of the payments includes: overseas lending granted to borrowers according to the overseas lending contract; returned principal and interest of overseas lending which are transferred into the corresponding foreign exchange capital account, foreign exchange account under the current account, or foreign currency funds pool account of the original transferred-inward funds; partial settlement of the originally purchased foreign exchange.



11. Where the lenders engage in overseas lending with self-owned foreign exchange funds, such lenders may directly handle the domestic foreign exchange transfer procedures at the designated foreign exchange banks upon the strength of the approval documents for overseas lending; where the lenders engage in overseas lending with foreign exchange funds purchased with RMB, such lenders may directly handle the foreign exchange purchase and domestic funds transfer procedures with the designated foreign exchange banks upon the strength of the approval documents for overseas lending.

12. Where the funds for lending are remitted outbound from the overseas lending special accounts, or funds, such as the principal and interest or performance guarantees, are transferred inbound into the overseas lending special accounts, the lenders shall apply for approval with the local foreign exchange administrations by submitting a written application, the overseas lending approval documents, a reconciliation statement of the overseas lending special account, etc. The local foreign exchange administrations shall, after confirming that such materials are correct, issue the approval instruments for foreign exchange business under the capital account, upon which the designated foreign exchange banks shall handle the relevant procedures for outbound or inbound remittances.

13. Where the overseas lending expires or the overseas borrowers request repayment in batches or advance repayments, the funds of the principal and interest, after being remitted into the overseas lending special accounts upon the approval of the local foreign exchange administrations, shall first be transferred back into the foreign exchange capital account from which the funds were originally transferred out in an amount equivalent to the originally transferred-out amount. After fully complementing the amount transferred out, the remaining amount may be transferred into the foreign exchange account under the current account. As for originally purchased foreign exchange, the lenders may directly handle the foreign exchange settlement procedures with the designated banks upon the strength of the approval documents for the original overseas lending and the vouchers for foreign exchange purchases.

14. The repayment funds for overseas lending shall not, when being remitted and transferred into the foreign exchange capital account of the lenders, reach the highest limit of the foreign exchange capital account; the designated foreign exchange banks where the repayment is remitted and transferred shall, in replying to the inquiry request of the designated foreign exchange bank concerning the repayment of such funds, indicate the letters for repayment funds in the remarks column, and no accounting firm shall handle the capital verification procedures for foreign-invested enterprises upon such replies to the inquiry request of the designated foreign exchange bank.

15. The lender shall accurately and timely declare the following information, such as the outward remittances and repayment of overseas lending funds, in accordance with the relevant regulations on the statistics and declaration of the balance of payments.

16. The foreign exchange administrations shall confirm the lending qualifications and quotas for lending of the lenders in the joint annual inspection of overseas investment enterprises. As for those lenders that do not participate in the joint annual inspections or fail to pass the confirmations, the foreign exchange administrations shall require such lenders to withdraw the principal and interest for the overseas lending, and the qualifications of such lenders for lending overseas shall not be renewed.

17. Where the lenders need to convert the overseas lending into equity investment, the lenders shall handle the overseas investment approval and foreign exchange registration change procedures in line with the relevant regulations concerning overseas investment.

18. The SAFE may adjust at the right timing the qualifications, sources, quantity, and term of the overseas lending of domestic enterprises in accordance with the situation in China's balance of payments and overseas lending.

19. Where any lender violates the regulations of this Circular, the foreign exchange administrations shall impose a penalty on such a lender in line with the *Regulations of the People's Republic of China on Foreign Exchange Administration* and the relevant rules on foreign exchange administration. Where the circumstances are serious, the foreign exchange administrations shall not approve the overseas lending or renewal applications; where overseas loans have been made, the foreign exchange administrations shall order the lender to terminate and retrieve such overseas lending.

20. Where any designated foreign exchange bank handles foreign exchange businesses in violation of the regulations of this Circular, the foreign exchange administrations may impose penalties on such banks in line with the *Regulations of the People's Republic of China on the Foreign Exchange Administration* and the relevant foreign exchange administration regulations.

21. The measures for the administration of overseas lending of non-bank financial institutions shall be formulated separately.

22. This Circular shall be interpreted by the State Administration of Foreign Exchange.

23. This Circular shall come into effect as of August 1, 2009. If there are any conflicts between the clauses concerning the administration of foreign exchange for overseas lending as set down in the *Circular of the State Administration of Foreign Exchange on Relevant Issues Concerning the Internal Operations and Management of Foreign Exchange Funds of Transnational Corporations* (Huifa No. 104 [2004]) and the regulations in this Circular, this Circular shall prevail.

### **78. Circular of the State Administration of Foreign Exchange on Issues Concerning Administration of Overseas Organizations' Foreign Exchange Accounts in China (SAFE, July 2009)**

Source: MOFCOM website. Retrieved from [http://www.fdi.gov.cn/pub/FDI\\_EN/Laws/law\\_en\\_info.jsp?docid=108907](http://www.fdi.gov.cn/pub/FDI_EN/Laws/law_en_info.jsp?docid=108907)

Hui Zong Fa [2009] No. 29

Branches and foreign exchange administrative divisions of the State Administration of Foreign Exchange (SAFE) in provinces, autonomous regions and municipalities directly under the central government, branches of the SAFE in Shenzhen, Dalian, Qingdao, Xiamen and Ningbo, and designated Chinese-invested foreign exchange banks,

For the purpose of regulating the opening and use of foreign exchange accounts in China by overseas organizations, facilitating investment in trade and preventing financial risks, according to the provisions of the *Foreign Exchange Control Regulations of the People's Republic of China*, the relevant issues are hereby notified as follows:

**Article 1** The "overseas organizations" herein refer to the organizations duly formed and registered in overseas regions (including Hong Kong, Macao and Taiwan). The "domestic banks" herein refer to the Chinese and foreign-invested banks that are qualified for operating businesses of taking deposits from the public and handling domestic and overseas settlement according to law.

The "overseas organizations' foreign exchange accounts in China" herein exclude overseas organizations' offshore accounts in China (accounts of overseas organizations opened with the offshore business departments of domestic banks that have the qualification for operating offshore banking businesses according to law).

**Article 2** Overseas organizations and domestic banks shall comply with the provisions herein and other relevant laws and regulations of the state when opening and using foreign exchange accounts and handling foreign exchange receipt and disbursement businesses.

**Article 3** A domestic bank shall review the account-opening materials of an overseas organization including documents proving its legal establishment and registration overseas when opening a foreign exchange account for it. Chinese versions of the account-opening materials including certificates shall be provided if such materials are prepared in foreign language. Except as otherwise provided by the SAFE, no approval from the SAFE and its branches (hereinafter referred to as “foreign exchange authorities”) is required for such opening.

The name of the foreign exchange account of an overseas organization in China shall be consistent with the name (or its corresponding Chinese name) on the documents proving its legal registration in overseas regions.

**Article 4** When opening a foreign exchange account for an overseas organization, a domestic bank shall make the mark of NRA (NON-RESIDENT ACCOUNT), namely NRA + foreign exchange account No., on the front of the foreign exchange account in a unified way and identify whether the overseas organization is a banking organization or a non-banking organization, so as to enable the parties and banks in China that have capital business with the foreign exchange account to accurately determine such foreign exchange account is an overseas organization’s foreign exchange account in China.

Within 18 months [of] the promulgation of this Circular, domestic banks shall finish their works on adjustment of their internal systems for marking overseas organizations’ foreign exchange accounts in a unified way as prescribed in the previous paragraph and marking of NRA on the overseas organizations’ foreign exchange accounts established before the promulgation of this Circular.

Domestic banks shall, in accordance with the *Circular of the State Administration of Foreign Exchange and the General Administration of Quality Supervision, Inspection and Quarantine on Distribution of the Operating Rules for Code Marking for Special Organizations in Statistics and Declaration of International Payment* (Hui Fa [2003] No.131), apply for a special organizational code for the overseas organization that applies for opening a foreign exchange account, go through procedures of registration of the basic information of the overseas organization with the foreign exchange authorities, and submit the information of the overseas organization concerning opening of a foreign exchange account, balances and details of receipt and payment to the foreign exchange authorities through the foreign exchange account administration system. Such provisions are inapplicable to the foreign exchange accounts of overseas banks in domestic banks including banker’s deposit accounts.

**Article 5** The foreign exchange receipt and payment between accounts of domestic organizations and individuals and overseas organizations’ foreign exchange accounts in China shall be subject to the administration of cross-border transaction[s]. Domestic banks shall, in accordance with the provisions on administration of foreign exchange for cross-border transaction[s], handle business after examining the valid business papers and vouches of domestic organizations and individuals.

Before a domestic bank finish[es] its work[] on marking of NRA, if there is a payment to a domestic organization or individual through an overseas organization’s foreign exchange account in China, the bank that pays the capital shall indicate NRA PAYMENT on P.S. of payment instructions to tell the bank that receives such payment the capital is from an overseas organization’s foreign exchange account. Where any domestic organization or individual makes any payment to an overseas organization’s foreign exchange account in China, it/he shall provide the bank that handles payment materials that can prove the type of the foreign exchange account for receiving foreign exchange, besides valid business papers and vouches as prescribed. If the bank that makes such payment [is] unable to identify the type of the foreign exchange account for receiving such payment . . . [because] of the materials used to proving the type of the foreign exchange account, it shall consult the bank that receives such payment about the type of the account and the latter shall give a written reply.

**Article 6** Where there is any foreign exchange collection from home and abroad incurred in an overseas organization’s foreign exchange account in China, any transfer of foreign exchange between such accounts

and any transfer or payment of foreign exchange between or from such account and/to an offshore account, a domestic bank may handle its business directly according to the instruments of its customer, except as otherwise provided by the SAFE.

**Article 7** Any capital transaction between an overseas organization's foreign exchange account in China and any account in home and abroad as well as changes of balances incurred shall . . . [go] through procedures of statistics and declaration for international payment according to the relevant provisions.

**Article 8** Without approval of the branches or administrative divisions of the SAFE in the place where it is registered, an overseas organization shall neither make deposit[s] and withdraw foreign currencies in/from its foreign exchange account in China, nor make any settlement in such foreign exchange account directly or in disguised form.

**Article 9** The balance of capital[] in an overseas organization's foreign exchange account in China, except as otherwise provided by the SAFE, shall be subject to the short-term foreign loan management of domestic banks. If such balance is used as [a] pledge of a domestic organization for [a] loan from a domestic bank, it shall be subject to the foreign exchange control for overseas guarantee[s] for domestic loan.

**Article 10** A domestic bank shall comply with the provisions of laws, administrative regulations and departmental rules on reports for any large scale or doubtful transaction for the purpose of anti-money laundering when handling businesses concerning overseas organizations' foreign exchange accounts in China.

**Article 11** The opening of an offshore account by any overseas organization or individual with the offshore business department of a domestic bank that [is qualified to operate an] offshore banking business according to law and any foreign exchange transaction between such offshore account and any domestic account shall be subject to the provisions of the *Measures for Administration of Offshore Banking Businesses* (Yin Fa [1997] No. 438) and its detailed rules for implementation.

**Article 12** The opening, use and clos[ur]e of a foreign exchange account of a QFII, a special foreign exchange account of a foreign investor, a foreign exchange account of foreign institutions for B-share market and a foreign exchange account of a foreign embassy or consulate or a representative office of any international organization with diplomatic immunity in China shall be subject to the provisions of the SAFE, if there is any, otherwise, to the provisions herein, including marking of NRA.

**Article 13** Where any organization violates provisions herein, the SAFE shall give it certain punishments according [to] the *Foreign Exchange Control Regulations of the People's Republic of China* and other relevant provisions on foreign exchange control.

**Article 14** The Circular shall enter into force on Aug. 1, 2009, except [for] the provisions on submission of the information concerning opening of overseas organizations' foreign exchange accounts in China as well as balances and details of the accounts to the SAFE through the foreign exchange account administration system, the implementation time for which will be notified separately by the SAFE.

This Circular shall be subject to the interpretation of the SAFE.

Branches and foreign exchange administrative divisions shall forward the Circular to the central sub-branches, branches and designated foreign exchange banks within their jurisdictions as soon as possible after receiving this Circular. For any issues incurred in implementation, please send the feedback[] to the Comprehensive Department of the SAFE.

Tel: 68402429, 68402129 Fax: 68402430

State Administration of Foreign Exchange, July 13, 2009

## 79. *Regulations on Foreign Exchange Administration of Overseas Direct Investments by Domestic Institutions* (SAFE, July 2009)

Source: SAFE website. Retrieved from [http://www.safe.gov.cn/model\\_safe\\_en/laws\\_en/laws\\_detail\\_en.jsp?ID=30600000000000000,52&type=&id=3](http://www.safe.gov.cn/model_safe_en/laws_en/laws_detail_en.jsp?ID=30600000000000000,52&type=&id=3)

The branches and foreign exchange administrative departments of the State Administration of Foreign Exchange (SAFE) in all provinces, autonomous regions and municipalities directly under the Central Government; the SAFE branches in Shenzhen, Dalian, Qingdao, Xiamen, and Ningbo:

For the purpose of carrying out the ["Going Global"] strategy of development, promoting the healthy development of overseas direct investment of domestic institutions, implementing the balanced management of cross-border capital flows, and safeguarding the basic equilibrium in the balance of payments of China, the SAFE has formulated the *Regulations on Foreign Exchange Administration of the Overseas Direct Investment of Domestic Institutions* (hereinafter referred to as the "Regulations") in line with the *Regulations of the People's Republic of China on Foreign Exchange Administration* and other relevant regulations. The Regulations are herein promulgated and shall take effect as of August 1, 2009. Please comply with the Regulations in handling the relevant businesses.

On receiving this Circular, all SAFE branches and foreign exchange administrative departments shall transmit this Circular in a timely manner to all sub-branches, urban commercial banks, rural commercial banks, and foreign-funded banks under their administration. All Chinese-funded designated foreign exchange banks shall transmit this Circular in a timely manner to the branches under their administration.

July 13, 2009

*Regulations on Foreign Exchange Administration of the Overseas Direct Investment of Domestic Institutions*

### Chapter 1: General Provisions

**Article 1** In order to promote and facilitate the overseas direct investment activities of domestic institutions, standardize the foreign exchange administration of overseas direct investment, and promote a basic equilibrium in the balance of payments of China, these Regulations are hereby formulated in line with the *Regulations of the People's Republic of China on Foreign Exchange Administration* and other relevant regulations.

**Article 2** "Overseas direct investment" as stated in these Regulations refers to acts by domestic institutions wherein the domestic institutions establish or acquire rights or interests outside the territory of China, such as ownership, rights of control or business management rights of existing enterprises or projects by means of establishment (sole proprietorships, joint ventures, cooperative business operations), mergers and acquisitions, equity participation, and so forth after undergoing examination and receiving approval from the overseas direct investment authorities.

**Article 3** The State Administration of Foreign Exchange and its branches (hereinafter referred to as the "Foreign Exchange Administrations") are responsible for implementing supervision and management [of] the foreign exchange receipts and payments and the foreign exchange registration arising from the overseas direct investment of domestic institutions.

**Article 4** Domestic institutions can make overseas direct investments with self-owned foreign exchange funds, domestic foreign exchange loans in conformity with the regulations, and foreign exchange purchased with RMB or tangible assets, intangible assets, and other foreign exchange assets examined and approved by the Foreign Exchange Administrations. Profits generated from the overseas direct investment of domestic institutions may also be retained overseas for the purpose of overseas direct investment.

Self-owned foreign exchange funds referred to in the preceding paragraph include: foreign exchange funds in foreign exchange accounts under the current account, capital accounts of foreign-invested enterprises, and so forth.

**Article 5** The State Administration of Foreign Exchange can make adjustments to the relevant policies concerning the scope of the sources and management modes of the foreign exchange funds for the overseas direct investment of domestic institutions and the overseas retention of profits generated from their overseas direct investment according to the situation in China's balance of payments and the situation in China[']s overseas direct investment.

## **Chapter 2: Foreign Exchange Registration and Outward Remittances of Funds for Overseas Direct Investment**

**Article 6** The Foreign Exchange Administrations shall carry out a foreign exchange registration and recording system for overseas direct investments of domestic institutions and for assets and relevant rights and interests generated from such investments.

Domestic institutions shall demonstrate the sources of the foreign exchange funds for their overseas investment when registering foreign exchange for overseas direct investment at the Foreign Exchange Administrations in their localities.

**Article 7** After undergoing examination and obtaining approval from the overseas direct investment authorities, domestic institutions shall register the foreign exchange for their overseas direct investment at the Foreign Exchange Administrations in their localities with the following materials:

1. Filing a written application and filling out the Application Form for Foreign Exchange Registration of Overseas Direct Investment (for the format of the form, please refer to Attachment 1);
2. Materials demonstrating the sources of the foreign exchange funds;
3. A valid business license or evidence of registration and the organizational code certificate of the domestic institution;
4. Approval documents or certificates that have been issued by the overseas direct investment authorities concerning the investments.
5. In cases where preceding expenses are remitted outward, the relevant documents explaining such remittances as well as evidence of such remittances shall be provided;
6. Other materials required by the Foreign Exchange Administrations.

The Foreign Exchange Administrations shall register the relevant situations in the corresponding business systems after examining and verifying the said materials, and shall grant the domestic institutions a foreign exchange registration certificate for overseas direct investment. The domestic institutions shall handle the foreign exchange receipt and payment business under overseas direct investment through the use of the said registration certificate.

Where one case of overseas direct investment is made collaboratively by a number of domestic institutions, the Foreign Exchange Administrations in the localities of the domestic institutions shall separately grant the relevant domestic institutions a foreign exchange registration certificate for overseas direct investment, and shall register the corresponding situations in the relevant business systems.

**Article 8** Domestic institutions shall complete the procedures for outward remittances of overseas direct investment funds at the designated foreign exchange banks by presenting to the banks the approval document and the foreign exchange registration certificate for overseas direct investment issued by the overseas direct investment authorities. The designated foreign exchange banks shall handle the procedures after examining the authenticity of the documents.

The cumulative amount of money remitted outward by the designated foreign exchange banks for handling remittances for overseas direct investment funds for domestic institutions shall not exceed the total amount of foreign exchange funds for overseas direct investment registered in advance by these domestic institutions in the relevant business systems of the Foreign Exchange Administrations.

**Article 9** The domestic institutions shall, within 60 days after the occurrence of the following circumstances, handle the foreign exchange registration, the modification or recording procedures for overseas direct investment with a foreign exchange registration certificate for overseas direct investment, the approval document or recording document issued by the overseas direct investment authorities, as well as the relevant materials demonstrating the authenticity of such documents at the Foreign Exchange Administration in their localities:

1. When the domestic institution retains the profits generated from their overseas direct investment outside the territory of China and foreign exchange revenue under the capital account generated from capital reduction, equity conversion, liquidation, and so forth of overseas enterprises for the purpose of establishing, acquiring, or participating in the equity of unregistered overseas enterprises, [the domestic institution] shall complete the foreign exchange registration procedures for the said direct investment activities;
2. In case of any changes in the basic information of the registered overseas enterprises, such as [a] modification of the corporate name, terms of operation, [joint venture] and cooperative partners, and manner of cooperation and so forth, or the occurrence of a capital increase, capital reduction, equity transfer or swap, merger or split, and so forth, the domestic institutions shall go through the foreign exchange registration modification procedures for overseas direct investment in light of the said change in circumstances;
3. In the case of the occurrence of significant matters such as long-term equity or debt investment, external guarantees, and so forth of registered overseas enterprises [that] do not involve a change in capital, the domestic institutions concerned shall complete the foreign exchange recording procedures for overseas direct investment for the said significant matters.

**Article 10** In cases where the equity of overseas enterprises held by domestic institutions is cancelled due to causes such as equity transfers, bankruptcy, dissolution, liquidation, expiry of operations, and so forth, the domestic institutions shall, within 60 days after obtaining [the relevant] documentary evidence issued by the overseas direct investment authorities, complete the foreign exchange registration procedures for the cancellation of the overseas direct investment by presenting the relevant materials to the Foreign Exchange Administrations in their localities.

**Article 11** The domestic institutions may provide commercial loans or external financial guarantees for the enterprises in which [their] overseas direct investment[s] [are] made in line with the Regulations of the People's Republic of China on Foreign Exchange Administration and other relevant regulations.

**Article 12** Where a domestic institution makes an investment in a country or region with foreign exchange controls, [the] institution can open a special foreign exchange account for payments and receipts of foreign exchange funds related to the investment in a country or region not subject to foreign exchange controls in line with the regulations.

### Chapter 3: Outward Remittances of Preceding Expenses for Overseas Direct Investment

**Article 13** The preceding expenses for overseas direct investment refer to expenses payable overseas by domestic institutions related to their overseas direct investment prior to the establishment of projects or enterprises by the domestic institutions through overseas investment, which include but are not limited to:

1. Guarantee funds payable by the domestic institutions for the purchase of equity or overseas asset interests and rights of overseas enterprises according to the provisions as stipulated by the laws in the localities of the projects or the requirements of the transferor;
2. Bidding deposits payable by the domestic institutions in the process of bidding and tendering of overseas projects;
3. Expenses needed for conducting a market survey, leasing an office site and equipment, recruiting staff, and inviting overseas intermediary institutions to provide services prior to the initiation of the overseas direct investment.

**Article 14** The preceding expenses remitted by the domestic institutions overseas normally shall not be more than 15 per cent of the total amount of overseas direct investment which the domestic institutions have already applied for with the direct investment authorities (hereinafter referred to as the "total amount of overseas direct investment"). The domestic institutions shall apply for the remittances of such expenses at the Foreign Exchange Administrations in their localities with the following materials:

1. A written application (including the total amount of overseas direct investment, the amount of contributions by each party, the form of contributions, and demonstration of the amount, use, fund sources, and so forth of the preceding expenses);
2. A valid business license or evidence of registration and the organizational code certificate of the domestic institutions;
3. Relevant documents demonstrating the participation of the domestic institutions in tendering, acquisition, or [joint-venture] and cooperative projects (including a letter of intent signed by the Chinese and foreign parties, a memorandum or framework agreement, and so forth);
4. The written application submitted by the domestic institutions to the overseas direct investment authorities;
5. A Letter of Commitment in written form issued by the domestic institutions on the use of the preceding expenses; [and]
6. Other relevant materials as required by the Foreign Exchange Administrations.

Where the preceding expenses remitted outward by the domestic institutions for overseas direct investment exceed 15 per cent of the total amount of overseas direct investment, the domestic institutions shall file an application for such remittances with the said materials to the SAFE branches in their localities (including the foreign exchange administrative departments).

The designated foreign exchange banks shall handle the foreign exchange purchase and payment procedures for the domestic institutions on the basis of the approval documents issued by the Foreign Exchange Administrations, and shall provide feedback on relevant information to the Foreign Exchange Administrations in a timely manner.

**Article 15** The preceding expenses remitted by domestic institutions overseas shall be listed in the total amount of overseas direct investment of the domestic institutions. The designated foreign exchange banks shall deduct the amount of the outward remitted preceding expenses from the total amount of overseas direct investment when handling the outward remittance of overseas direct investment funds of domestic institutions.



**Article 16** Where domestic institutions fail to complete the examination and approval procedures for overseas direct investment within 6 months after the date of the outward remittance of the preceding expenses, the domestic institutions shall transfer the remaining funds in their overseas accounts to the original domestic foreign exchange accounts from which the funds have been remitted. In cases where the remitted foreign exchange funds are identified as foreign exchange purchased with RMB, the domestic institutions can complete the procedures for exchange settlement at the designated foreign exchange banks with the original foreign exchange purchase vouchers.

The Foreign Exchange Administrations in the localities of the domestic institutions shall be responsible for supervising the inward transfer of the remaining preceding expenses by domestic institutions. If an extension of the 6-month period is required for this work, the said 6-month period can be properly extended after the extension is examined and approved by the Foreign Exchange Administrations that have conducted the examination and approval procedures for the remittance of the preceding expenses; however, the period of extension shall not exceed a maximum of 12 months.

#### **Chapter 4: Inward Remittances of Funds and Foreign Exchange Settlement under Overseas Direct Investment**

**Article 17** Where the domestic institutions remit profits generated from their overseas direct investment to within China, such profits can be deposited in foreign [ex]change accounts under the current account of the said domestic institutions or can handle the foreign exchange settlement formalities.

The designated foreign exchange banks shall handle the procedures for account entering or exchange settlement of profits generated from the overseas direct investment of domestic institutions after ensuring the authenticity of the relevant materials of the domestic institutions, such as the foreign exchange registration certificate for overseas direct investment, the relevant financial statement and decision on the disposal of the profits of the overseas enterprises, the annual examination and verification inspection report for the previous year and so forth.

**Article 18** The foreign exchange revenue under the capital account of the domestic institutions that is generated from capital reductions, equity transfers, liquidation, and so forth of overseas enterprises established by such institutions shall be put into an account via the special foreign exchange accounts for asset realization, or shall be retained outside of China with the approval from the Foreign Exchange Administrations. The opening and account entering of the special foreign exchange accounts for asset realization shall be subject to examination and approval of the Foreign Exchange Administrations in the localities of the domestic institutions according to the relevant regulations. Foreign exchange settlement of funds in such accounts shall be subject to applications handled at the designated foreign exchange banks according to the relevant regulations.

**Article 19** Where domestic institutions transfer in full or in part the equity of enterprises under their overseas direct investment to other domestic institutions, the relevant funds shall be paid in RMB within the territory of China. The transferors of such equity shall complete the change or cancellation procedures for foreign exchange registration for their overseas direct investment at the Foreign Exchange Administrations in their localities. The transferees of such equity shall complete the foreign exchange registration procedures for overseas direct investment for transferred equity at the Foreign Exchange Administrations in their localities.

#### **Chapter 5: Supplementary Provisions**

**Article 20** Domestic institutions (excluding financial institutions) shall participate in the annual inspections in line with the relevant regulations on joint annual inspections for overseas investment. Where one case of overseas direct investment is jointly implemented by a number of domestic institutions, such institutions shall separately participate in the foreign exchange annual inspection at the Foreign Exchange Administrations in their localities.

**Article 21** Direct investment made by domestic institutions in Hong Kong SAR, Macao SAR, and Taiwan Province shall be subject to administration in line with these Regulations.

**Article 22** Unless otherwise stipulated by the relevant supervisory departments on fund use of overseas direct investment of domestic financial institutions, the foreign exchange administration on overseas direct investment of domestic financial institutions shall be implemented in line with these Regulations.

**Article 23** Such businesses as foreign exchange receipts and payments and foreign exchange registration under overseas direct investment by domestic institutions shall be handled via the corresponding business systems according to the relevant regulations.

The designated foreign exchange banks shall provide feedback to the Foreign Exchange Administrations on information about the foreign exchange receipts and payments under overseas direct investment via the relevant business systems.

**Article 24** Any domestic institution in breach of these Regulations shall be penalized by the Foreign Exchange Administrations in line with the *Regulations of the People's Republic of China on Foreign Exchange Administration*. Where the acts of a domestic institution constitute a crime, such institution shall assume criminal responsibility in accordance with the relevant laws.

**Article 25** These Regulations shall be interpreted by the State Administration of Foreign Exchange.

**Article 26** These Regulations shall take effect as of August 1, 2009. Other regulatory documents listed in Annex a shall be annulled as of the date of implementation of these Regulations. Where previous regulations are inconsistent with these Regulations, these Regulations shall prevail.

### **80. Circular of the State Administration of Foreign Exchange on Issues Concerning Foreign Exchange Administration of Overseas Direct Investments by Domestic Banks (SAFE, June 2010)**

Source: SAFE website. Retrieved from [http://www.safe.gov.cn/model\\_safe\\_en/laws\\_en/laws\\_detail\\_en.jsp?ID=30600000000000000000,62&type=&id=3](http://www.safe.gov.cn/model_safe_en/laws_en/laws_detail_en.jsp?ID=3060000000000000000,62&type=&id=3)

The branches and foreign exchange administrative departments of the State Administration of Foreign Exchange (SAFE) in all provinces, autonomous regions, and municipalities directly under the Central Government; the branches in Shenzhen, Dalian, Qingdao, Xiamen, and Ningbo; and all designated Chinese-funded foreign exchange banks:

For the purpose of regulating the foreign exchange-related business involved in overseas direct investments by domestic banks, the following issues concerning the foreign exchange administration of overseas direct investments by domestic banks are hereby announced, according to the *Regulations of the People's Republic of China on Foreign Exchange Administration (Decree No. 532 of the State Council of the People's Republic of China)* and the *Circular of the SAFE on the Promulgation of the Regulations on the Foreign Exchange Administration of Overseas Direct Investments by Domestic Institutions* (Huifa [2009] No. 30):

1. Domestic banks contained herein refer to legal-person banks, such as domestic policy banks, state-owned commercial banks, joint-stock commercial banks, the Postal Savings Bank of China, foreign legal-person banks, city commercial banks, rural commercial banks, and rural cooperative banks.

2. When making overseas direct investments in the event of (1) the establishment of overseas branches (except for representative offices); (2) the establishment of overseas affiliates; (3) equity acquisitions of overseas institutions in line with the relevant laws; and (4) other direct investment projects approved by the relevant authorities, the

domestic banks concerned shall, after receiving approval from the banking regulatory departments or other relevant authorities, go through the foreign exchange registration formalities for overseas direct investments at the branches of SAFE in their locality (hereinafter referred to as the "local SAFE offices") with the materials required in Article 7 of the *Regulations on the Foreign Exchange Administration of Overseas Direct Investments by Domestic Institutions* (hereinafter referred to as the Regulations).

For transactions concerning Item (1) above, the domestic banks shall furnish the corresponding operating capital allocation plans that have been submitted to the banking regulatory departments.

3. The domestic banks shall fill out the Application Form for Foreign Exchange Registration for Overseas Direct Investments (hereinafter referred to as the "Application Form") annexed to the Regulations according to the following:

1) Fill in the "Investment Nature" item according to the business scope of the invested institutions. When the invested institutions are financial institutions, fill in "Other" and specify the specific financial category (banking, insurance, securities, or other) as a note.

2) When the overseas investments are made with self-owned or purchased foreign exchange (including remittances from domestic and overseas accounts), for the "Means of Contribution" item, "Amount and Currency of Contribution" in "Domestic Spot Exchange" shall be selected; When such investments are made with profits and dividends generated from other overseas institutions in which the domestic banks have invested, for the "Means of Contribution" item, "Converted Amount and Currency of Contribution" in "Overseas Funds" shall be selected.

3) When the payment is made directly with foreign exchange (including remittances from domestic and overseas accounts), under the "Source of Foreign Exchange" item "Domestic Outward Remittance" shall be selected. If no foreign exchange purchases are involved, "Self-owned Foreign Exchange" shall be selected; If foreign exchange purchases are involved, "Foreign Exchange Purchase" shall be selected.

4. The local SAFE offices shall, upon confirmation of the authenticity of the relevant materials and information, handle the foreign exchange registration for the overseas direct investments by domestic banks in the relevant business system and issue a corresponding registration certificate for the domestic banks that are handling such registration for the first time.

5. In the event of outward remittances of foreign exchange for overseas direct investments, domestic banks may, as per the foreign exchange registration certificate for overseas direct investments that contains relevant information thereof, go through the formalities for foreign exchange purchases or payments through the relevant business system.

The domestic banks shall, after conclusion of the formalities for foreign exchange purchases and payments, handle the feedback formalities within THREE working days through the relevant business system as per the relevant regulations.

6. The domestic banks shall, as per the first two provisions of Article 9 as well as Article 10 of the Regulations, handle the foreign exchange registration, alteration, or cancellation formalities for overseas direct investments at the local SAFE offices for changes in issues relevant to overseas direct investments that have already been conducted. For issues important but irrelevant to capital changes, such as the long-term equity investment incurred in the registered overseas institutions, the domestic banks shall place such issues on file for the record for future reference at the local SAFE offices.

7. Domestic banks may conduct outward remittances of preliminary expenses for overseas direct investments with self-owned foreign exchange or with direct foreign exchange purchases. Domestic banks without approval for such investments by the banking regulatory departments or other relevant authorities shall recall the residual capital within ONE year after the date of the outward remittance of the preliminary expenses. When the capital remitted outward is foreign exchange purchased in RMB, the domestic banks may conduct the foreign exchange settlement on their own with the original voucher for the foreign exchange purchase.

8. Profits generated from overseas direct investments by domestic banks shall not undergo separate foreign exchange settlements, but will be included in the foreign exchange profits of the banks for uniform administration, and corresponding foreign exchange settlements shall be carried as per the relevant regulations.

9. For foreign exchange earnings under the capital account generated from capital reductions, equity transfers and liquidations, and so forth from investments in overseas institutions by domestic banks, as well as foreign exchange receipts and payments as stated in Article 7 and 8 contained herein, the domestic banks shall provide feedback on the transaction through the relevant business system within THREE working days after the date of the foreign exchange receipt and payment.

10. In the event of settlements of foreign exchange earnings under the capital account generated from capital reductions, equity transfers and liquidation, and so forth from investments in overseas institutions, the domestic banks shall, on the basis of their own capital as well as the relevant regulations on foreign exchange settlements and sales of financial projects, conduct such settlements upon approval from the SAFE or the local SAFE branches (including the foreign exchange administrative departments). Domestic banks shall also provide feedback on the transaction through the relevant business system within THREE working days after the date of settlement.

11. When domestic banks transfer full or partial equity of overseas institutions acquired from their overseas direct investments to other domestic institutions, the relevant funds shall be paid in RMB within the territory of China. The transferors of such equity shall handle the alteration or cancellation formalities for the foreign exchange registration of their overseas direct investments at their local SAFE offices. The transferees of such equity shall handle the foreign exchange registration formalities for the overseas direct investment of the transferred equity at their local SAFE offices.

12. In the event of overseas direct investments conducted prior to promulgation of this Circular, domestic banks shall, as per Article 2 contained herein, handle the foreign exchange registration for overseas direct investment at the local SAFE offices by October 31, 2010. In the event of failure to furnish the relevant approval documents by the relevant authorities for historical reasons, the domestic banks shall submit to the local SAFE offices a completed Application Form with information on each investment as well as a summary list of information on all investments, and the local SAFE offices shall enter such information on the registration.

When domestic banks fail to handle the above registration formalities within the prescribed period or according to the prescribed procedures, the local SAFE offices shall impose penalties for breach of the relevant regulations on administration of foreign exchange registration.

13. This Circular shall enter into force as of September 1, 2010. As for matters of foreign exchange administration concerning overseas direct investments by domestic banks not clarified in this Circular, the domestic banks shall handle such business with reference to the Regulations.

All SAFE branches and foreign exchange administrative departments shall, upon receipt of this Circular, immediately forward it to the subordinate branches, foreign legal-person banks, city commercial banks, rural commercial banks, and rural cooperative banks within their respective jurisdictions;

### 81. Circular of the State Administration of Foreign Exchange on the Administration of External Guarantees Provided by Domestic Institutions (SAFE, July 2010)

Source: SAFE website. Retrieved from [http://www.safe.gov.cn/model\\_safe\\_en/laws\\_en/laws\\_detail\\_en.jsp?ID=306000000000000000,64](http://www.safe.gov.cn/model_safe_en/laws_en/laws_detail_en.jsp?ID=306000000000000000,64)

The branches and foreign exchange administrative departments of the State Administration of Foreign Exchange (SAFE) in all provinces, autonomous regions, and municipalities directly under the Central Government; the branches of the SAFE in Shenzhen, Dalian, Qingdao, Xiamen, and Ningbo; and the head offices of all domestic designated foreign exchange banks:

To deepen the reform of administration of external guarantees provided by domestic institutions and to support domestic institutions['] participation in international economic and financial cooperation, in accordance with the *Measures for the Administration of External Guarantees Provided by Domestic Institutions* (Yinfa No.302 [1996]) (hereinafter referred to as the "Measures"), the SAFE has decided to further adjust the mode of administration for external guarantees provided by domestic institutions. We hereby notify you of the following relevant issues:

1. The term "external guarantee" as referred to in this Circular means that under the *Guaranty Law of the People's Republic of China*, the *Property Law of the People's Republic of China*, and the Measures, a domestic institution (guarantor) promises an overseas institution (beneficiary), in the form of a surety, mortgage, pledge, and so forth, that if the debtor (a domestic or overseas institution) fails to fulfill its contractual obligations, the guarantor shall perform the obligations or the beneficiary shall, under the *Guaranty Law of the People's Republic of China* and the *Property Law of the People's Republic of China*, receive priority repayment with the proceeds from the auction or sale of the collateral or pledge.

A guarantee provided for a debtor by a domestic institution shall be treated as an external guarantee and shall be governed by this Circular if the debtor is an overseas institution but the beneficiary is a domestic institution.

The term "financing external guarantees" as referred to in this Circular means external guarantees for which the master contract has a financing nature, including but not limited to guarantees provided for borrowing, bond issuances, and financing leases, as well as other forms of external guarantees recognized by the SAFE.

The term "non-financing external guarantees" as referred to in this Circular means external guarantees other than financing external guarantees, including but not limited to quality guarantees, liability guarantees for completion of a project, tender guarantees, advance payment guarantees, deferred payment guarantees, and performance guarantees under a goods purchase and sales contract, as well as other forms of external guarantees recognized by the SAFE.

The term "enterprises" as referred to in this Circular means legally formed non-financial corporate institutions other than banks and non-banking financial institutions.

2. The SAFE administers the external guarantees provided by domestic institutions based on balanced management or case-by-case approval. The financing external guarantees provided by domestic banks shall be subject to balanced management, whereas the external guarantees provided by non-banking financial institutions and enterprises generally shall be subject to case-by-case approval, or when conditions permit may be subject to balanced management.

3. To provide financing external guarantees, a domestic bank qualified to operate the guarantee business may apply to the local branch/sub-branch or foreign exchange administrative department of the SAFE (hereinafter collectively referred to as the "foreign exchange authorities," with the branches and foreign exchange administrative departments hereinafter referred to as "SAFE branches") for a balance quota for the external guarantees (hereinafter referred to as [a] "quota"). Within the quota approved by the foreign exchange authority, the bank

may provide financing external guarantees at its sole discretion and need not apply to the foreign exchange authority for approval on a case-by-case basis.

There is no quota limit on non-financing external guarantees provided by a domestic bank qualified to operate the guarantee business, and the bank need not apply to the foreign exchange authority for approval on a case-by-case basis provided that there is compliance with the relevant risk management provisions of the regulatory authorities.

4. A domestic bank shall make a quota application according to the following principles:

(1) For a domestic corporate bank, the application shall be filed by the corporate body; and

(2) For a branch of a foreign bank without a corporate body within China, the branch may make an application independently, or the principal reporting bank of the affiliated banks (branches) in China, which exercises centralized management of the quota, may make a unified quota application.

5. A domestic bank shall, before April 15 of each year, apply to the local foreign exchange authority for the current year's quota, and the local SAFE branch shall gather such applications and preliminarily examine them.

Each local SAFE branch shall fill out the Demand Schedule for External Guarantee Balance Quotas for xxx (year) (see Annex 1) after the preliminary examination, submit it along with the quota application reports of the SAFE branch and all banks to the SAFE for approval, and assign the approved quotas to the banks.

Before the current year's quotas are assigned, the last year's quotas shall remain valid. If a bank's quota for the current year is decreased, the bank shall not provide any new external guarantees before reducing its balance of financial external guarantees to within the current year's quota.

To apply for a quota for the first time, a bank may, as needed, apply to the [SAFE] through the local SAFE branch.

6. The foreign exchange authorities shall assign a quota to a bank mainly based on the paid-in capital or working capital in both RMB and foreign currency or the net asset scale of the foreign exchange of the bank. The foreign exchange authorities may make corresponding adjustments by referring to the banks performance of external guarantees, regulatory compliance in providing external guarantees and assessed implementation of the foreign exchange administration provisions in the last calendar year, the bank's business development plan for the current year, and the state's balance-of-payments situation and policy control needs for the current year, and so forth.

7. Generally, the quota for a single bank shall not exceed 50 per cent of its paid-in capital or working capital in both RMB and foreign currency, or shall not exceed its net asset value of foreign exchange.

8. To apply for an annual quota, a bank shall submit:

(1) An application report and the Application Form for a Balance Quota for External Guarantees Provided by a Domestic Institution (see Annex 2);

(2) Its last year's consolidated balance sheet and earnings statement as well as a statement on the source and application of foreign exchange capital (if it is applying for the first time, it shall also submit photocopies of its financial business permit and business license);

(3) A statement of its external guarantee business and regulatory compliance during the last calendar year (except for a newly formed bank);

(4) The current year's business development plan; and

(5) Other materials as set forth by the foreign exchange authority.

9. The quota for a domestic bank subject to balanced management may be directly used by the bank or may be broken down for use by its domestic branches (including the branches and sub-branches of a foreign bank which exercise centralized control over the quota and have no corporate body within China).

10. A bank shall strictly control its financing external guarantees within the quota assigned by the foreign exchange authority. The debtor shall not be subject to such conditions as its equity relationship with the domestic institution, net asset proportions, and profits and losses, but shall comply with the guaranty laws and regulations of the state as well as the relevant administrative provisions of the industrial regulatory authority.

11. In a non-financing external guarantee provided by a bank, at least one of the debtor and the beneficiary shall be a corporate body legally formed and registered within China, or at least one of them shall be an overseas institution which is formed by a domestic institution or in which a domestic institution directly or indirectly holds shares according to the relevant provisions.

12. The head office of a bank or the principal reporting bank which exercises centralized control over the quota shall gather the external guarantees provided by the entire bank in a timely manner, and within the first five workdays of each month it shall handle the regular filing formalities for external guarantees at the local foreign exchange authority by filling out the Form for Filing for All External Guarantees Provided by a Domestic Bank, a Case-by-Case Form for Filing New Financing External Guarantees Provided by a Domestic Bank, and a Case-by-Case Form for Filing for Performance of Financing External Guarantees Provided by a Domestic Bank (see Annex 3 [1], [2], and [3]). The above filing formalities shall be regarded as registration formalities, and the foreign exchange authority shall no longer issue external guarantee registration certificates to the bank.

For an external guarantee provided in the name of a bank's domestic branch office, the branch office shall also file the relevant data with the local foreign exchange authority according to the above requirements, but such data shall not be incorporated into the external guarantee statistics of the foreign exchange authority system.

The entry into force of a financing external guarantee provided by a bank within the quota shall not be conditioned upon going through the filing formalities with the foreign exchange authority. External guarantees provided beyond the quota without approval shall be dealt with under the Measures and other relevant provisions.

13. To provide external guarantees, a domestic non-banking financial institution or enterprise shall submit each to the foreign exchange authority for approval. In the case of a domestic non-banking financial institution or enterprise (including a wholly foreign-funded enterprise) which has a large number of external guarantees and sound internal management, its corporate body may apply to the foreign exchange authority for an approved balance of external guarantees (including both financing and non-financing external guarantees) under the procedures prescribed for in Articles 5 and 8 of this Circular. For external guarantees within the approved balance, a domestic non-banking financial institution or enterprise need not apply to the foreign exchange authority for approval on a case-by-case basis.

(1) If the guarantor is a non-banking financial institution, its quota shall be decided with reference to the basis as prescribed in Articles 6 and 7 of this Circular.

(2) If the guarantor is an enterprise, as a general requirement the proportion of its net assets to its total assets shall not be lower than 15 percent, and the approved balance assigned by the foreign exchange authority to the enterprise or the balance of its external guarantees approved on a case-by-case basis shall not exceed 50 per cent of its net assets.

14. To provide external guarantees, non-banking financial institutions and enterprises shall observe the following provisions:

(1) The debtor shall meet the following requirements:

If the guarantor is a non-banking financial institution, the debtor must be a corporate body legally formed and registered within China or an overseas institution which is formed by a domestic institution or in which a domestic institution directly or indirectly holds shares according to the relevant provisions.

If the guarantor is an enterprise, the debtor must be a domestic or overseas enterprise which is formed by the guarantor or in which the guarantor directly or indirectly holds shares under the prescribed procedures.

a. The net asset value of the debtor shall be positive.

b. The debtor shall have made profits in at least one of the past three years. If the debtor engages in resource development or any other long-term project, it shall have made profits in at least one of the past five years. There shall be no mandatory profit requirement for the debtor if it has not been three years (for an ordinary enterprise) or five years (for a resource development enterprise) since its formation.

This requirement does not apply to a repo guarantee provided to a domestic bank by a domestic real estate developer for a non-residential housing mortgage loan.

(2) To provide the following external guarantees, a non-banking financial institution or an enterprise subject to balanced management must apply to the foreign exchange authority for approval on a case-by-case basis:

If the external guarantee to be provided does not meet the requirements of this Circular and other relevant provisions in terms of the quota scale, net asset value, or profits, it shall be reported to the SAFE for approval on a case-by-case basis through the local SAFE branch.

a. If the subject matter of the guarantee is an obligation to repay the debt under a financing contract and the financing purpose of the debtor is to acquire equities of an overseas enterprise (target company), or if the debtor is the transferee under a contract for transferring the equities of an overseas enterprise (target company) and the subject matter of the guarantee is an obligation to pay the equity transfer price under the equity transfer contract, the guarantee shall be reported for approval to the SAFE branch at the place where the guarantor is located, and the guarantor shall provide the approval document issued by the overseas investment authority of the state on the overseas investment or acquisition project in which the relevant enterprise (the debtor or any affiliated enterprise thereof) participates (see Annex 4 for relevant operational guidance).

Each external guarantee approved by the foreign exchange authority on a case-by-case basis shall be included within the scope of the quota control. If the quota is inadequate, the foreign exchange authority may adjust it at the time of approval on a case-by-case basis.

(3) Wholly foreign-funded enterprises not subject to balanced management shall handle the case-by-case approval, registration, and other formalities for their external guarantees with reference to the principles for the administration of ordinary enterprises.

(4) A non-banking financial institution or an enterprise shall, within 15 days after entering into an external guarantee contract, handle the case-by-case registration formalities for the external guarantee at the local foreign exchange authority. For an external guarantee subject to balanced management, the local foreign exchange authority shall, according to the relevant provisions, check the qualifications other than those of the guarantor itself and issue an external guarantee registration certificate.



15. To provide an external guarantee, a domestic institution shall handle the performance formalities according to the following provisions:

(1) Where a bank needs to perform a financing or non-financing external guarantee, it may make foreign payments under the guarantee at its own discretion. The sources of capital needed for providing an external guarantee may be foreign exchange advances, the deposit paid by the counter guarantor in foreign exchange or RMB, or the payment made by the counter guarantor for a default on the debt.

To provide an external guarantee, a non-banking financial institution or an enterprise must apply to the local foreign exchange authority for approval on a case-by-case basis and may purchase foreign exchange for the purpose of providing the external guarantee.

(2) Where the guarantor is a bank or non-bank financial institution, if the counter guarantor voluntarily performs its payment obligation under the counter guarantee, the counter guarantor may directly handle the foreign exchange purchase or payment formalities at the bank upon the strength of the documentary evidence on the performance of the guarantee, and the guarantor shall on its own enter the relevant foreign exchange capital into the account. If the debtor under the external guarantee voluntarily performs its repayment obligation to the guarantor, the debtor and the guarantor may handle their payment and collection formalities respectively.

Where the debtor or the counter guarantor fails to voluntarily perform its repayment obligation for repayment or performance of the guarantee for various reasons, the guarantor may purchase foreign exchange with RMB legally collected from the debtor or the counter guarantor with reference to the provisions for bank foreign exchange settlements or sales on behalf of debtors.

(3) Where an enterprise acts as a guarantor or a counter guarantor as noted in paragraph (2), the foreign exchange recovered from the debtor may be settled upon the approval of the foreign exchange authority.

16. Domestic insurance companies providing external guarantees shall be regarded as banks in the filing of the data and the performance of the guarantee, which means that their performance of external guarantees is not subject to approval by the foreign exchange authority, but they shall go through the regular filing formalities for external guarantees under Article 12 of this Circular.

17. All domestic institutions providing external guarantees shall be governed by the following provisions:

(1) Domestic institutions providing external guarantees shall comply with the guaranty laws and regulations of the state as well as the administrative provisions of the industrial regulatory authorities for [the] guarantee business and strengthen the relevant risk controls.

(2) Domestic institutions providing external guarantees for debtors that are joint ventures formed domestically or overseas shall not be restricted by any equity investment proportion for a domestic or overseas institution.

(3) As for a financing external guarantee provided for an overseas invested enterprise, the capital under the guarantee shall not be transferred back to China directly or through a third party in the form of borrowing, equity investment, or securities investment. The domestic guarantor or the overseas investee of the parent company of the enterprise within China shall oversee the use of the capital acquired by the debtor to ensure that the capital is used for the overseas production and operation activities of the debtor.

(4) A domestic institution that provides a non-financing external guarantee may, based on its actual business needs, choose not to specify the amount and terms of the guarantee in the contract as long as the guarantee obligations are defined. When handling the approval, registration, and filing formalities for the external guarantee, the foreign exchange authority or the guarantor may determine the amount and terms

noted in the contract for the guarantee, which are mostly related to the guarantor's payment obligations with respect to the referenced amount and the terms for the performance obligations under the guarantee, but the guarantor's actual payment obligations under the external guarantee shall not be restricted by reference to the amount and the term.

(5) The debt amount under an external guarantee shall not be restricted by the scale of the foreign exchange income of the guarantor.

(6) Unless it is otherwise provided in this Circular, domestic institutions shall handle the contract signing, registration, modification, performance, and cancellation formalities for the external guarantees in accordance with the Measures, the *Detailed Rules for Implementation of the Measures for the Administration of External Guarantees Provided by Domestic Institutions* (Huizhengfa No.10 [1997], hereinafter referred to as the "Detailed Rules"), and other relevant provisions.

(7) The transfer of any right or debt under an external guarantee shall conform to the foreign exchange administration provisions.

18. A counter guarantee provided by a domestic institution for a domestic or overseas institution (debtor) to its overseas guarantor shall be regarded as an external guarantee, and the domestic institution providing the counter guarantee and the domestic or overseas institution as the debtor must conform to the provisions of this Circular.

Where a domestic institution provides a counter guarantee for the debtor (a domestic or overseas institution) to another domestic institution that provides an external guarantee for the debtor according to the external guarantee provisions, the counter guarantee shall not be regarded as an external guarantee, but shall conform to the relevant foreign exchange administration provisions.

19. To provide mortgages, pledges, and so forth, a guarantor must comply with the relevant provisions of the relevant authorities for collaterals and pledges.

Where a guarantor provides an external mortgage, pledge, and so forth for its own legal foreign debt or other foreign payment obligations, it shall not be subject to the relevant qualifications for external guarantees, inclusion in the quota control, or a case-by-case application to the foreign exchange authority for approval, but it shall go through the regular filing formalities or the case-by-case registration for external guarantees at the local foreign exchange authority. In the event of the provision of a guarantee, a non-banking financial institution or an enterprise shall apply to the foreign exchange authority for approval on a case-by-case basis.

A guarantor providing a mortgage or pledge for the debt of a third party shall be subject to the same foreign exchange administration provisions for third party guarantees in terms of the qualifications and requirements, except where specially provided for.

20. The foreign exchange authorities shall supervise and inspect the external guarantee business of domestic institutions. Where any institution provides external guarantees without approval, beyond the approved quota, or in violation of this Circular or other related provisions, the foreign exchange authority may, as the case may be, cut its current year's quota, subject it to case-by-case approval instead of balanced management, or take other measures and impose punishments in accordance with the *Regulation of the People's Republic of China on Foreign Exchange Administration* and other relevant provisions. If the circumstances are serious, the foreign exchange authority shall suspend its external guarantee business.

21. All SAFE branches shall, after receiving this Circular, forward it to the central sub-branches and financial institutions within their respective jurisdictions as soon as possible.

22. This Circular shall come into force on the date of issuance. Paragraph 1 of Article 5 of the Measures and Article 21 of the Detailed Rules shall cease to be effective from the date of issuance of this Circular. The *Circular of the State Administration of Foreign Exchange on Adjusting the Management Mode of Overseas Financial Guarantees Provided by Domestic Banks for Overseas Investments of Enterprises* (Huifa No.61 [2005]) issued on August 16, 2005 and other relevant normative documents (see Annex 5) shall be abolished simultaneously. For any discrepancy between this Circular and any other regulation issued by the SAFE, this Circular shall prevail.

## ***Annex I: Overview of Relevant Agencies and Institutions***

**State Council:** The State Council is China's cabinet. Headed by the Premier, directs policy-making at the national level. It establishes the overall blueprint for OFDI and manages its implementation. It decides on priorities for and coordinates national economic development, manages foreign affairs, and concludes treaties. The State Council also drafts laws and regulations (which then have to be approved by the National People's Congress and the Standing Committee) and supervises China's national ministries and other entities such as the State-Owned Assets Supervision and Administration Commission and the People's Bank of China. The State Council is also directly involved in the approval of overseas projects requiring very large amounts of foreign exchange or major investments in natural resources.

### **Commissions and Ministries under the State Council**

**China Banking Regulatory Commission (CBRC):** This institution is directly under the State Council. Since 1992, it has been responsible for approving OFDI projects by Chinese banks.

**China Insurance Regulatory Commission:** This commission is a ministerial institution directly under the State Council. It is responsible for examining, approving and supervising the establishment of overseas insurance organizations by Chinese insurance companies.

**Ministry of Commerce (MOFCOM):** This ministry is a major entity at the central level in terms of its influence and control over foreign investment and aid. Formerly the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) and Ministry of Domestic Commerce, MOFCOM's responsibilities related to OFDI include (1) developing policies and regulations on OFDI; (2) approving certain OFDI projects; (3) conducting negotiations on and ensuring compliance with trade and investment treaties; and (4) coordinating China's foreign aid policy. Key institutions under the MOFCOM that play a role in China's foreign aid and investment activities are the following:

**Department of Aid to Foreign Countries:** This office, with the assistance of the Ministry of Foreign Affairs, drafts the aid budget. It also drafts the aid regulations, programs the zero-interest loans and grants, and works with China's ExIm Bank on concessional loans

**Executive Bureau of International Economic Cooperation:** This office handles the tenders and bids for China's aid projects, and also manages aspects of projects funded by grants and zero-interest loans.

**Department of Outward Investment and Economic Cooperation:** This department supports Chinese companies' efforts to expand overseas by assisting with labor services, international contracting, and overseas economic zones. It works with the ExIm Bank to make decisions on issuance of export buyer's credits, and also manages other subsidy programs relating to international business that are not included within the foreign aid budget.

**Local bureaus of commerce:** Local offices in Chinese provinces, cities and counties perform various administrative functions delegated by MOFCOM.

**Ministry of Finance (MOF):** The Ministry of Finance formulates and implements strategies and policies for public finance and economic development. It examines the budgets for state expenditures before they are approved, including the budget for foreign aid.

**Ministry of Foreign Affairs (MFA):** This ministry is responsible for implementing and managing China's diplomatic principles and policies. The ministry also works with the Department of Aid to Foreign Countries of Ministry of Commerce to draft the annual plan for aid, signs off on changes in the aid plan, and signs off, along with the Ministries of Commerce and Finance, on decisions in cash aid. Its power over aid matters, however, purportedly pales in comparison to that held by the Ministry of Commerce.

**National Development and Reform Commission (NDRC):** The NDRC, formerly the State Development Planning Commission, is the main body responsible for designing, regulating and coordinating Chinese economic development and industrial policies. Among its functions related to OFDI, it develops strategies, medium and long term plans, goals and policies on overseas investment, including working with MOFCOM to identify and list the industries and countries in which the Chinese government allows and encourages or in which it limits or prohibits Chinese firms to invest.

It also helps develop the government measures that will be used to promote that investment. Further, the NDRC is also involved in the approval process for certain investments such as major investments in natural resources or investments involving large amounts of foreign exchange.

**State Administration of Foreign Exchange (SAFE):** Established in 1979, SAFE is primarily responsible for monitoring the use of foreign exchange. Supervised in part by PBC, SAFE performs the following tasks: (1) reporting balance of payment data to the State Council and International Monetary Fund, (2) developing foreign exchange policies for recommendation to the PBoC, (3) overseeing inflows and outflows of foreign exchange under the capital account, and (4) managing China's foreign exchange reserves.

**State-Owned Assets Supervision and Administration Commission (SASAC):** The SASAC represents the government as owner of and investor in non-financial enterprises of the central government. It has authority and responsibility to supervise and increase the value of those state-owned enterprises by, for example, restructuring the enterprises, improving their corporate governance, and appointing, removing, and reviewing the performance of top executives.

### **Chinese Banks:**

**China Development Bank:** Initially created as one of China's three policy banks, this institution has become a "commercial" bank since Dec. 17, 2008. Traditionally, this institution has provided loans in order to finance investments primarily in domestic infrastructure. Its overseas lending, however, has been expanding rapidly in recent years. Evidence of this include its 2007 launch of the China-Africa Development Fund and work with the ExIm Bank to support Chinese companies' major projects abroad. As of 2009, it was active in 78 countries, implementing and promoting the "Go Global" strategy through such offerings as currency swaps, credits and loans, fund management, equity investment, merger and acquisition financing, and leasing operations. Its overseas activities cover infrastructure, basic industries, agriculture, small and medium-sized enterprises, and housing.

**ExIm Bank:** ExIm Bank is one of China's main policy banks. This institution is expected to operate on a break-even basis and is at the center of the "Go Global" strategy. It provides: export seller's credits (large, preferential loans for Chinese companies operating abroad), export buyer's credits (loans to importers of Chinese goods or services in targeted sectors), and guarantees, and operates China's program of concessional foreign aid loans. The concessional loan program is the only aid program it operates. Its other offerings – export credits and guarantees – are not counted as aid and make up the bulk of its portfolio.

**People's Bank of China (PBOC):** The People's Bank of China, originally established in 1948, was assigned the role of China's central bank in 1983. It is supervised directly by the State Council. According to the Law of the People's Republic of China on the People's Bank of China, as amended in 2003, the bank's major functions are the following:

(1) Drafting and enforcing relevant laws, rules and regulations that are related to fulfilling its functions; (2) Formulating and implementing monetary policy in accordance with law; (3) Issuing the Renminbi and administering its circulation; (4) Regulating financial markets, including the inter-bank lending market, the inter-bank bond market, foreign exchange market and gold market; (5) Preventing and mitigating systemic financial risks to safeguard financial stability; (6) Maintaining the Renminbi exchange rate at adaptive and equilibrium level; Holding and managing the state foreign exchange and gold reserves; (7) Managing the State treasury as fiscal agent; (8) Making payment and settlement rules in collaboration with relevant departments and ensuring normal operation of the payment and settlement systems; (9) Providing guidance to anti-money laundering work in the financial sector and monitoring money-laundering related suspicious fund movement; (10) Developing statistics system for the financial industry and responsible for the consolidation of financial statistics as well as the conduct of economic analysis and forecast; (11) Administering credit reporting industry in China and promoting the building up of credit information system; (12) Participating in international financial activities at the capacity of the central bank; (13) Engaging in financial business operations in line with relevant rules; [and] (14) Performing other functions prescribed by the State Council.<sup>11</sup>

The bank's role in establishing and implementing monetary policy and managing foreign exchange reserves makes it a key institution relevant for OFDI.

<sup>11</sup> See "People's Bank of China: About PBC," available from the People's Bank of China's website at <http://www.pbc.gov.cn/publish/english/952/index.html>.

*Annex II: Organizational Chart*