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Guidelines on the Approval or Filing of Overseas Direct Investment by Chinese Enterprises

With the deepening of China's opening-up and one belt one road construction, more and more Chinese enterprises start to go global. In order to regulate the overseas direct investment (ODI) conducted by Chinese enterprises, the National Development and Reform Commission (NDRC), the Ministry of Commerce (MOFCOM) and other government authorities of the PRC have issued relevant administration measures and regulations in recent years. According to those administration measures and regulations, Chinese enterprises shall apply for an approval or filing with the NDRC and MOFCOM before they carry out overseas investment. They are also required to apply for foreign exchange registration for ODI before they make capital contribution to overseas enterprises.

Kaizen hereby draw up the guidelines on the approval or filing of ODI by Chinese enterprises as follows for your easy reference.

1. MOFCOM Approval or Filing

According to the Measures for the Administration of Overseas Investment Management issued by the MOFCOM of the PRC, overseas investment involving any sensitive country or region or any sensitive industry shall be subject to approval management. Overseas investment under other circumstances shall be subject to filing management.

The Chinese enterprises shall apply for an approval from the MOFCOM under the following circumstances:

- (1) ODI in sensitive countries or regions
Sensitive countries or regions include those countries or regions without diplomatic relation with the PRC, subject to international sanctions or in war or civil disturbances.
- (2) Investment projects involve sensitive industries
Sensitive industries include those involving the export of products and technologies restricted by the PRC from export or involving the interests of at least one country (or region). Such as development, production and maintenance of weapons and equipment; development and utilization of transboundary water resources; news media etc.

The following ODI application will not be approved or filed:

- (1) The business scope of overseas enterprises involve finance industry (i.e., banking, insurance and securities etc.). Such application shall be handled by the competent authorities of the finance industry.
- (2) Invest in real estate, hotel, cinema, entertainment industry, sports club, winery and other fields.
- (3) Establish equity investment funds or investment platforms without specific industrial projects.
- (4) Investment involving the export of core technologies and products of military industry without state approval.
- (5) Investment involving the use of technologies and technological products prohibited from export by the PRC.
- (6) Investment involving gambling industry, pornography industry etc.
- (7) Investment prohibited by international treaties to which the PRC is a contracting or participating party.
- (8) Other overseas investments that harm or may harm national interests and security of the PRC.

Normally, establishment of equity investment funds or investment platforms without specific industrial projects abroad will not be approved or filed by the MOFCOM. However, except for the following circumstances:

- (1) Overseas investment funds approved by the state council.
- (2) A special purpose vehicle (SPV) established for the purpose of listing in overseas stock exchange.
- (3) Assets under ultimate control are located in the territory of the PRC.
- (4) An investment platform established for the purpose of issuing bonds abroad (The domestic investment entity shall obtain an approval from the NDRC in advance).

The MOFCOM is required to issue the Overseas Investment Certificate for Enterprises within 30 working days upon receipt of the application for ODI approval, while the local authority is required to issue the certificate within 3 working days upon receipt of the application for ODI filing. The actual time shall be subject to the handling time limit of the specific approving or filing authority.

The Overseas Investment Certificate for Enterprises is valid for 2 years. It shall become null and void automatically if the enterprise has not actually carried out overseas investment within 2 years upon the issuance of the certificate.

The Chinese party in the overseas enterprise shall report to and register with the business offices of overseas Chinese embassies or consulates abroad in time after the establishment of the overseas enterprise. The receipt of such registration shall be submitted to the approving or filing authority for record.

2. NDRC Approval or Filing

Approval from or filing with the NDRC is also required when a Chinese enterprise intends to carry out overseas investment. It shall apply for approval or filing prior to the implementation of the overseas investment project.

Overseas investment conducted by Chinese enterprises directly or through overseas enterprises under their control in sensitive countries or regions or sensitive industries (sensitive projects) shall be subject to approval management. Non-sensitive projects directly conducted by Chinese enterprises shall be subject to filing management.

The NDRC is required to issue the approval within 20 working days upon receipt of the application for ODI approval, while the local authority is required to issue the filing notice within 7 working days upon receipt of the application for ODI filing. The actual time shall be subject to the handling time limit of the specific approving or filing authority.

The approval or filing notice issued by the NDRC or its local authority is also valid for 2 years. The Chinese enterprise shall apply for extension with the approving or filing authority 30 working days prior to the expiration date if necessary.

3. Foreign Exchange Registration

Chinese enterprises shall apply for foreign exchange registration for ODI before they make capital contribution to the overseas enterprise. They could apply for such registration via their opening banks when they have obtained the Overseas Investment Certificate for Enterprises and approval or filing notice from the NDRC or its local authority. The time limit for such registration shall be subject to the handling time of the specific banks. The Chinese enterprises could remit out the funds upon completion of the foregoing foreign exchange registration.

If you wish to obtain more information or assistance, please visit the official website of Kaizen CPA Limited at www.kaizencpa.com or contact us through the following and talk to our professionals:

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