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Classification of Chinese ODI Projects

As more and more Chinese enterprises carry out overseas direct investment (ODI), China has updated and released a series of regulations and policies on overseas direct investment of enterprises in recent years. Kaizen has summarized the application procedures and reporting obligations involved in the two articles, *Guidelines on the Approval or Filing of ODI by Chinese Enterprises* and *Reporting Obligations for Chinese ODI Investors*. It is crucial for Chinese enterprises that are planning to carry out ODI activities to have a thorough understanding of relevant regulations and policies and prejudge the category and approval tendency of overseas investment projects. Kaizen hereby summarizes the classification of Chinese ODI projects and the relevant regulations for your easy reference.

The ODI projects of Chinese enterprises are divided into three categories, i.e. the encouraged category, the restricted category and the prohibited category, in accordance with the Guiding Opinions of the National Development and Reform Commission, the Ministry of Commerce, the People's Bank of China and the Ministry of Foreign Affairs on Further Directing and Regulating the Direction of Overseas Investments.

1. Encouraged ODI

The encouraged ODI include:

- (1) ODI projects that are conducive to Belt and Road construction and infrastructural connections among neighbouring countries and regions.
- (2) ODI projects that may drive the output of superior production capacity, high-quality equipment and technical standards.
- (3) Strengthen the investment cooperation with overseas high-tech and advanced manufacturing enterprises and encourage the establishment of overseas R&D centres.
- (4) Prudently participate in the exploration and development of overseas oil, gas, mineral and other energy resources on the basis of prudent assessment of economic benefits.

- (5) Expand the agricultural cooperation with other countries and carry out mutually beneficial investment cooperation in agriculture, forestry, herding, fisheries and other fields.
- (6) Promote overseas investment in business, culture, logistics and other services in an orderly manner, support eligible financial institutions to establish overseas branches and service networks, and conduct business in accordance with the law.

2. Prohibited ODI

Chinese enterprises are prohibited from engaging in overseas investment that endangers or may jeopardize national interests and security. The prohibited ODI projects will not be able to obtain the approval or record filing notice from the commerce bureau and development and reform commission, which include:

- (1) ODI involving the export of core technologies and products of military industries without state approval.
- (2) ODI involving the use of technologies, techniques and products that prohibited from export by China.
- (3) Gambling industry, pornography industry and etc.
- (4) ODI prohibited by international treaties concluded or acceded to by China
- (5) Others that endanger or may jeopardize the interests and security of the state.

3. Restricted ODI

- (1) Restricted Categories
 - (a) ODI in sensitive countries and regions that have no diplomatic relations with China, that are subject to war or that shall be restricted by the provisions of bilateral and multilateral treaties or agreements concluded by China.
 - (b) ODI in in real estate, hotels, movie studios, entertainment, sports clubs and etc.
 - (c) Setting up offshore equity investment funds or investment platforms without specific underlying industrial projects.
 - (d) ODI involving the use of backward production equipment that does not meet the technical standards of the destination country.

- (e) ODI that does not meet the environmental protection and energy consumption safety standards of the destination country.

The first three items shall be subject to the approval of the competent department in charge of overseas investment.

(2) Exceptions

- (a) The following six types of ODI activities are excluded from the restricted real estate investment:

- (i) investment into property management and real estate agency businesses;
- (ii) construction or acquisition of properties for self-use, including office premises and employee dormitories;
- (iii) investment for industrial infrastructures construction and development, such as industrial parks, science and technology parks and logistics parks;
- (iv) investment by construction enterprises in exchange of a minority stake in projects with the purpose of obtaining construction contracts for such projects;
- (v) uncompleted projects that have been approved by the development and reform commission or have been notified for record filing in accordance with the law;
- (vi) investment not involving of domestic assets or interests or provision of onshore financing or guarantee. The entire capital is raised from overseas.

- (b) The following four types of ODI activities are excluded from the restricted hotel investment:

- (i) investment in hotel management businesses holding no hotel properties;
- (ii) investment in restaurant businesses without lodging services;
- (iii) uncompleted projects that have been approved by the development and reform commission or have been notified for record filing in accordance with the law;
- (iv) investment not involving of domestic assets or interests or provision of onshore financing or guarantee. The entire capital is raised from overseas.

(c) The following two types of ODI activities are excluded from the restricted category of setting up offshore equity investment funds or investment platforms without specific underlying industrial projects:

- (i) equity investment funds or investment platforms which involves neither commitment of domestic assets or interest nor provision of onshore financing or guarantee and whose entire capital is raised from overseas;
- (ii) equity investment funds or investment platforms without specific underlying industrial projects formed by domestic financial institutions with the pre-approval of the competent financial regulatory authorities in China.

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