

Salient Points of MOFCOM' s New Regulations on Foreign Investment

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On 25 February 2011, the Ministry of Commerce (“MOFCOM”) promulgated the Notice on Relevant Issues Concerning the Administration of Foreign Investment, delegation the authority over certain foreign investment items to MOFCOM’ s provincial-level counterparts and canceling the examination and approval of certain foreign investment items. The salient points include:

1. Changes in legal addresses (except those under the jurisdiction of other examination and approval authorities), names or names of investors are subject to filing only.

In the case of any change in the legal address, name or name of investor(s) of a foreign-invested enterprise (“FIE”), examination and approval of the commerce department is not required, and the FIE may directly go through amendment registration formalities with the competent administration for industry and commerce. The FIE shall, within 30 days after completing the amendment registration formalities, file the change with the competent commerce department by presenting the application, resolution made the governing body of the enterprise, amendment to the contract/AOA, documents evidencing the change, and photocopies of the original FIE Approval Certificate and the new business license, and then obtain the new FIE Approval Certificate.

2. Authorities Issuing Confirmation Letter for Encouraged Foreign Investment Projects

The project confirmation letters for encouraged foreign-invested enterprises with total investment of less than USD 300 million shall be handled by provincial-level commerce departments in accordance with relevant laws and regulations.

3. Approval Authorities for Foreign M & A Deals

Foreign M & A deals of below USD 300 million shall be examined and verified by provincial-level commerce departments, but those required to be examined and verified by MOFCOM pursuant to the Provisions on Mergers and Acquisition of Domestic Enterprises by Foreign Investors are still subject to MOFCOM approval.

4. Investment FIPs shall be treated as overseas investors

Foreign-invested partnership enterprises whose primary business in investment shall be treated as overseas investors, and their onshore investments shall conform to laws, administrative regulations, and rules relating to foreign investment.