

Salient Points of State-owned Assets Supervision and Administration Commission's New Regulations on outbound investment of State-owned enterprise

---- Co-authors: Sharon Zhang; Wei Ding

On 1 July 2011, SASAC announced the new interim measures administration in connection with investment administration. Special attention should be paid to the following points:

1. Specific scope of Central Enterprises and their Outbound Enterprises

Pursuant to Article 2 of the New Measures, these provisions apply to central enterprises and their wholly-owned or controlled enterprises at all levels. (hereinafter referred to as “subsidiaries at all levels”). For the purpose of the new Measures, Central Enterprises refer to enterprises which perform the responsibilities of investors, to be brief, central enterprises mean those enterprises established by SASAC.

Pursuant to the Measures, outbound enterprises refer to enterprises owned or controlled by Central Enterprises and their subsidiaries at all levels established outbound or in Hong Kong Special Administrative Region (hereinafter referred to as “SAR”), Macao SAR as well as Taiwan Region in accordance with local applicable law, excluding enterprises with only some of whose equities being held by Central Enterprises.

2. Outbound Investment Administration

Pursuant to the Measures, Central Enterprises exercise functions through company's governing structure such as shareholder's general meeting, which is the same for investment administration of inboard central enterprises and their subsidiaries at all levels. However, the difference is that some special corporate behavior shall be subject to SASAC's filing or approval.

Pursuant to Article 7.2 of the Measures, mergers and acquisitions upon outbound listed companies and material subscription behavior of central enterprises and their vital subsidiaries shall be subject to SASAC's filing or approval.

As for the exact definitions of vital subsidiaries and material outbound subscription behavior, the Measures have not provided an explicit scope.

3. Outbound Enterprises Administration

Pursuant to Article 29 of the Measures, the following eight kinds of behavior conducted by outbound enterprises are subject to central enterprises' approval in advance.

(i) increase or decrease of registered capital, merger, split, dissolution, liquidation, application for bankruptcy, or change of forms of business organization;

(ii) adoption of proposals on annual accounting budget, settlement, distribution of dividends, and deficit coverage;

(iii) financing activities such as issuing bonds or securities;

(iv) engagement of takeover, investment on equities, financial services as well as financial derivatives business;

(v) offering for securities or donation to outside parties;

(vi) disposition of material assets or assignment of property ownership;

(vii) opening, change, revocation of bank account;

(viii) other items stipulated in Articles of Association.

To put it in another way, **the aforesaid eight kinds of behavior are not only subject to resolutions of shareholder's general meeting of relevant outbound enterprises, but also subject to approval of the corresponding holding central enterprises.**