



CHINA LEGAL BRIEFING 94

WENGER & VIELI BEIJING OFFICE

November 8th - November 12th, 2004

CHINA LEGAL BRIEFING is a weekly collection of Chinese law related news gathered from various media and news services, edited by WENGER & VIELI and distributed to its clients and CHINA LEGAL REPORT SUBSCRIBERS. W&V does not accept responsibility for accuracy of quotes or truthfulness of content. CHINA LEGAL BRIEFING is not intended to provide legal advice.

1. *National*

Provisions on Administration of Investigations with Foreign Elements

涉外调查管理办法

【*Issued By*】 National Bureau of Statistics of China

【*Subject*】 Investigation with Foreign Elements

【*Promulgated on*】 October 13th 2004

【*Effective From*】 October 13th 2004

【*Source*】 www.stats.gov.cn

【*Repeal*】 Provisional Rules on Administration of Social Investigations with Foreign Elements 1999
("涉外社会调查活动管理暂行办法")

W E N G E R & V I E L I

ROOM 722, GOLDEN LAND BUILDING, NO. 32 LIANG MA QIAO ROAD, CHAOYANG DISTRICT, BEIJING 100016 P.R.C
PHONE: +86 10 6468 7331 / 32, FAX: +86 10 6460 3132

WE PROVIDE EXTENSIVE LEGAL ADVICE AND REPRESENTATION PRIMARILY IN THE FOLLOWING FIVE PRACTICE AREAS

- FINANCIAL SERVICES (BANKING LAW, STOCK EXCHANGE AND SECURITIES LAW, INVESTMENT FUND LAW)
- TRANSACTIONS (MERGERS AND ACQUISITIONS, PRIVATE EQUITY AND CAPITAL MARKETS)
- LITIGATION/ARBITRATION
- COMPETITION LAW AND INTELLECTUAL PROPERTY LAW
- TAX

The regulation, enacted under Law on Statistics with a view to maintaining national security and public interests as well as protecting rights and interests of the investigating institutions and the investigatees, contributes most of its provisions to the administration of qualification for Investigations with Foreign Elements ("Investigations") and the administration of investigation projects.

Investigations for the purpose of this regulation refer to one of the following:

- market investigations and social investigations authorized or funded by overseas organizations and individuals or by China based institutions of overseas organizations;
- market investigations and social investigations conducted in cooperation with overseas organizations and individuals or China based institutions of overseas organizations;
- market investigations conducted by overseas organizations in accordance with the law;
- market investigations and social investigations the results of which are to be provided to overseas organizations and individuals or China based institutions of overseas organizations.

As far as administration concerned, the State applies licensing system to institutions carrying out Investigations and demands prior approval in respect of social Investigations. It is provided that market Investigations shall be conducted by institutions carrying out Investigations; that social Investigations shall not be conducted until applications for such Investigations from the institutions carrying out Investigations have been approved by competent authorities. No overseas organizations and individuals may directly carry out market and social Investigations in China, nor may they engage institutions without the License for Investigations with Foreign Elements ("License") to conduct market and social Investigations.

China-based institutions of overseas organizations the business scope of which include market investigation may apply for the License if they satisfy the following conditions:

- Equipped with personnel in familiar with rules of the State on the Investigation;
- having established strict and complete system for confidentiality;
- no material breaches within the past two years.

However, the License is valid only for the Investigations targeting goods and services related to these institutions and in no case be relied upon to carry out social Investigations.

Provisional Rules on Administration of the Acknowledgement of Foreign Investments

外商投资项目核准暂行管理办法

【Issued By】 National Development and Reform Commission

【Subject】 Foreign Investment

【Promulgated on】 October 9th 2004

【Effective From】 October 9th 2004

【Source】 www.sdpc.gov.cn

This regulation, enacted to give effect to *Law on Administrative Licensing* and *Decision of State Council on Reforms in Investment System*, applies to acknowledgement of various foreign investments in China, including Sino-Foreign Joint Equity Enterprises, Sino-Foreign Cooperative Enterprises, Wholly Foreign Owned Enterprises, acquisition of domestic enterprises by foreign investors, and increase in capital of foreign invested enterprises.

The powers of acknowledgement are divided among National Development and Reform Commission (NDRC) and local governments on the basis of the overall investment amount and the classification of the projects in accordance with *Catalogue Guiding Industries for Foreign Investments*. To elaborate, the NDRC will exercise its acknowledgement power in respect of the following projects:

- The Encouraged Projects whose overall investment amount is no less than USD 100 million;
- the Permitted Projects whose overall investment amount is no less than USD 100 million;
- the Restricted Projects whose overall investment amount is no less than USD 50 million;

The NDRC is to refer the Encouraged /Permitted Projects whose overall investment amount is no less than USD 500 million and the Restricted Projects whose overall investment amount is no less than 100 million to State Council for final acknowledgement after it has examined such applications.

The local authorities in charge of reform and development will exercise their acknowledgement powers in respect of the following projects:

- The Encouraged Projects whose overall investment amount is under USD 100 million;
- the Permitted Projects whose overall investment amount is under USD 100 million;
- the Restricted Projects whose overall investment amount is under USD 50 million;

Of projects subject to acknowledgement from local authorities, the Restricted Projects shall only be acknowledged by provincial authorities and such power cannot be delegated to authorities at lower levels.

The following criteria will be applied in reviewing investment applications:

- Relevant laws and regulations of the State, *Catalogue Guiding Industries for Foreign Investments*, *Catalogue of Priority Industries for Foreign Investments in Central and Western Areas*;
- medium and long term national economic and social plans, industry plans and policies on the restructure of industries;
- public interests and rules of the State against monopoly;

- land use plans, overall urban plans and policies on environmental protection;
- standards of the State on technologies and craftwork;
- rules on administration of capital account and foreign debts.

Provisional Rules on Administration of Acknowledgement of Overseas Investments

境外投资项目核准暂行管理办法

【Issued By】 National Development and Reform Commission (NDRC)

【Subject】 Overseas Investment by Chinese Investors

【Promulgated on】 October 9th 2004

【Effective From】 October 9th 2004

【Source】 www.sdpc.gov.cn

As another instrument implementing *Law on Administrative Licensing* and *Decision of State Council on Reforms in Investment System*, this regulation applies to acknowledgement of overseas investments by China-based legal persons ("Investors") via overseas enterprises or institutions controlled by them.

Overseas investments for the purpose of this regulation refer to acquirement of overseas ownership, operation and management privileges, and related interests, by the Investors through making contribution of currencies, securities, materials, intellectual properties, technologies, shares, and claims over debts, or through providing security.

The State applies the acknowledgement requirement to projects exploiting resources and projects demanding large sum of foreign exchange. The NDRC exercises its acknowledgement power in respect of the following projects:

- Projects exploiting crude oil and mine overseas to which the investment in foreign exchange from the Chinese party is no less than USD 30 million;
- projects other than projects exploiting resources to which the investment in foreign exchange from the Chinese party is no less than USD 10 million;

Of the projects subject to acknowledgement from the NDRC, the following are subject to final acknowledgement from State Council:

- Projects exploiting resources to which the investment in foreign exchange from the Chinese party is no less than USD 200 million;

- projects other than projects exploiting resources to which the investment in foreign exchange from the Chinese party is no less than USD 50 million.

The provincial authorities in charge of reform and development are competent to acknowledge the following subjects:

- Projects exploiting crude oil and mine overseas to which the investment in foreign exchange from the Chinese party is under USD 30 million;
- projects other than projects exploiting resources to which the investment in foreign exchange from the Chinese party is under USD 10 million.

Enterprises administered by the central government may make independent investment decisions, free from acknowledgement requirements, and submit their decisions to the NDRC for record in the following circumstances:

- Projects exploiting crude oil and mine overseas to which the investment in foreign exchange from the Chinese party is under USD 30 million;
- projects other than projects exploiting resources to which the investment in foreign exchange from the Chinese party is under USD 10 million.

Investments made to Taiwan and countries with which China has not established diplomatic relations are subject to acknowledgement of the NDRC and State Council, as the case may be, regardless of the amount of investment.

© Wenger Vieli Belser, Beijing, October 15th, 2004

Check the China Legal Briefing archives on: <http://www.wengerlaw.ch/EN/publications/1/index.asp>
Obtain your personal subscription from: china@wengerlaw.ch

DISCLAIMER

THIS PUBLICATION IS INTENDED TO PROVIDE ACCURATE INFORMATION IN REGARD TO THE SUBJECT MATTER COVERED. READERS ENTERING INTO TRANSACTION ON THE BASIS OF SUCH INFORMATION SHOULD SEEK ADDITIONAL, IN-DEPTH SERVICES OF A COMPETENT PROFESSIONAL ADVISOR. WENGER & VIELI, THE AUTHOR, CONSULTANT OR GENERAL EDITOR OF THIS PUBLICATION EXPRESSLY DISCLAIM ALL AND ANY LIABILITY AND RESPONSIBILITY TO ANY PERSON, WHETHER A FUTURE CLIENT OR MERE READER OF THIS PUBLICATION OR NOT, IN RESPECT OF ANYTHING AND OF THE CONSEQUENCES OF ANYTHING, DONE OR OMITTED TO BE DONE BY ANY SUCH PERSON IN RELIANCE, WHETHER WHOLLY OR PARTIALLY, UPON THE WHOLE OR ANY PART OF THE CONTENTS OF THIS PUBLICATION.