

# CHINA LEGAL BRIEFING\* 225

AUGUST 06 – 12, 2012



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## Implementation Opinions of National Energy Administration on Encouraging and Guiding Private Capital to Further Increase Investment in the Energy Sector

国家能源局关于鼓励和引导民间资本进一步扩大能源领域投资的实施意见

<b>【Issued by】</b>	National Energy Administration
<b>【Subject】</b>	Resources Law
<b>【Promulgated on】</b>	June 18, 2012
<b>【Effective from】</b>	June 18, 2012
<b>【Source】</b>	<a href="http://www.nea.gov.cn/2012-06/20/c_131665600.htm">http://www.nea.gov.cn/2012-06/20/c_131665600.htm</a>

In May 2010, the State Council issued the Opinions on Encouraging and Guiding the Healthy Development of Private Investment (Guo Fa [2010] No.13) to promote private investment activities. In order to encourage private investment in the energy sector, which has long been dominated by state-owned companies, on June 18, 2012, the National Energy Administration (NEA) issued the Implementation Opinions of National Energy Administration on Encouraging and Guiding Private Capital to Further Increase Investment in the Energy Sector (“Opinions”).

The Opinions encourage private investment in a wide variety of sectors including mining, oil and gas exploration and production, nuclear power, renewable energy, refining, power generation, power-grid construction and oil and gas pipelines. This move comes as the government aims for greater fairness and better treatment in the industrial accession to the private sector. However, there are no articles designed for the foreign investment opportunities.

### Main Points:

- China would open all energy sectors listed in the national energy plan, except those prohibited by law, to private investors. The private investors are encouraged to participate in China’s key energy projects that would boost the restructuring and future development of the industry. The new policy would allow eligible private developers to pursue projects for large-scale coal mines, as well as unconventional oil and gas resources like coal-bed methane, shale gas and oil shale.
- China will support private investment in energy exploration, coal processing, oil refining, network development of petroleum and natural gas and electric power construction, and give private capital full access to the new energy and renewable energy sectors.
- Fair and sound market access. There shall be no discriminatory restrictions to limit private investment in hydropower and wind power development as per the Opinions. All funding sources, including international financial organizations and foreign government loans, should treat private investors equally. The price support policies are planned to be improved to support the development of the private sector in new energy, renewable energy and adjusting of energy structure.

## Circular of the State Administration of Foreign Exchange on Issues Concerning the Administration of Foreign Exchange on Encouraging and Guiding the Healthy Development of Private Investment

国家外汇管理局关于鼓励和引导民间投资健康发展有关外汇管理问题的通知

<b>【Issued by】</b>	Ministry of Finance; State Administration of Taxation
<b>【Subject】</b>	Foreign Exchange
<b>【Promulgated on】</b>	June 15, 2012
<b>【Effective from】</b>	July 01, 2012
<b>【Source】</b>	<a href="http://www.safe.gov.cn">http://www.safe.gov.cn</a>

On 15 June 2012, in line with the principles as set forth in the Opinions on Encouraging and Guiding the Healthy Development of Private Investment (Guo Fa [2010] No.13) by State Council dated May 7, 2010, the State Administration of Foreign Exchange (SAFE) released Circular of the State Administration of Foreign Exchange on Issues Concerning the Administration of Foreign Exchange on Encouraging and Guiding the Healthy Development of Private Investment (Huifa [2012] No. 33) ("Circular"), which has been effective since July 1, 2012 and designed to solve the major foreign exchange issues that "go-global" private companies may face, i.e., overseas financing difficulties and insufficient cash flow by facilitating certain foreign exchange administration requirements on outbound investment by private companies.

### Highlights:

- 1) Simplifying the administration requirements on the repatriation of overseas direct investment funds

For the outbound investments of domestic enterprises, the remitted balance between the total investment and the registered capital as the overseas direct investment funds can be directly remitted back to China upon registration with the local SAFE authorities. A capital decrease or investment withdrawal registration, is no longer required.

- 2) Simplifying the foreign exchange administration on the provision of overseas loans

Domestic enterprises are allowed to provide overseas loans to their offshore subsidiaries using their foreign exchange loans borrowed from domestic banks. Approvals for the purchase and remittance of foreign exchange or repatriation of the overseas loans are no longer required. Upon application, SAFE will grant a quota to each domestic enterprise for the loan which could be granted to its offshore subsidiaries. After completion of the relevant registration formalities, the

domestic enterprises may open a special account at a designated bank to remit the loan or receive the repayment of the loan from their offshore subsidiaries.

3) Allowing Individuals Acting as Co-Guarantor together with Cooperate Guarantor

While a domestic enterprise provide guarantees to its overseas subsidiary for overseas financing purposes, a PRC individual may act as a co-guarantor to provide guarantee, mortgage, pledge or other kind of securities measures as permitted by PRC Securities laws for the same debt of the overseas subsidiary.

In this case, the PRC individual shall entrust the domestic enterprise to file an application with the local SAFE (where the domestic enterprise is located) on behalf of this individual. If the local SAFE approves the guarantee in question, the co-guarantor application of this individual will be registered with SAFE together with the registration of the guarantee provided by this domestic enterprise. No substantial examination on the qualification of the concerned individual, the guarantee method, the scope of the secured assets to be provided will be conducted by the SAFE. Upon the enforcement of the guarantee, the competent SAFE will require the concerned individual to provide the relevant guarantee documents.

## Circular on Printing and Distributing the Opinions on Encouraging and Guiding Private Enterprises to Actively Engaging in Overseas Investment

关于印发鼓励和引导民营企业积极开展境外投资的实施意见的通知

<b>【Issued by】</b>	State Administration for Industry and Commerce; General Administration of Quality Supervision; Inspection and Quarantine; State Administration of Foreign Exchange; Ministry of Finance; Ministry of Commerce; Ministry of Industry and Information Technology; Ministry of Foreign Affairs; General Administration of Customs; National Development and Reform Commission; China Insurance Regulatory Commission; China Banking Regulatory Commission; China Securities Regulatory Commission; The People's Bank of China
<b>【Subject】</b>	Overseas Investment
<b>【Promulgated on】</b>	June 29, 2012
<b>【Effective Date】</b>	June 29, 2012
<b>【Source】</b>	<a href="http://www.sdpc.gov.cn">http://www.sdpc.gov.cn</a>

Pursuant to Opinions on Encouraging and Guiding the Healthy Development of Private Investment (Guofa [2010] No. 13), the central government has shown great determination in supporting the development of private investment in various industries, by jointly issuing Circular on Printing and Distributing the Opinions on Encouraging and Guiding Private Enterprises to Actively Engaging in Overseas Investment (Fa Gai Wai Zi [2012] No.1905, "Circular 1905") on June 29th, 2012, 13 Ministries and Commissions aim to support the "go-global" private enterprise through a series of measures in respects of finance, taxation, customs, forex, and simplifying investment examination and approval procedures, and create a good policy environment for the private enterprises in outbound investments.

### Highlights:

1. Supporting the qualified private enterprise in developing overseas energy resources in countries and regions with satisfactory conditions and enhancing the private investment in overseas high-tech and advanced manufacturing industries;
2. Supporting private enterprises having strength to actively engage in investment cooperation in overseas infrastructures, agricultural industry and service industries;
3. Supporting qualified private enterprises to "go global" to establish marketing networks and logistics service networks such as overseas distribution centers, display centers.
4. Encouraging the domestic banks to provide credit support in various ways such as providing working capital loans to the overseas investment by the private enterprises, such as liquidity loans, syndicated loans, export credit and merger and acquisition loans.

5. Supporting the key enterprises to issue overseas bonds in RMB and foreign currencies, encouraging eligible enterprises to obtain financing through listing in domestic or overseas capital markets.
6. Improving the service provisions by agents and supporting departments for the outbound investment.

Providing guidance in the introduction to the Madrid System for the international registration of trademarks, enhancing the awareness of the protection of trademarks and international trademark certification.

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