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- 1 **State Council further revises Catalogue of Investment Projects Subject to Governmental Approval**
- 2 **China Adopts Amendments to Administrative Procedure Law**

1. State Council further revises Catalogue of Investment Projects Subject to Governmental Approval

Less than one year after the issuance of the *2013 Catalogue of Investment Project Subject to Governmental Approval* (“2013 Catalogue”), on 31 October 2014, the PRC State Council has promulgated the *2014 Catalogue of Investment Project Subject to Governmental Approval* (“2014 Catalogue”), which will further streamline the existing regulatory procedures and approval requirements for certain investment projects.

We summarize the highlights as brought about by this 2014 Catalogue below:

A. Registration Replaces Approval

For 15 types of investments including iron and steel, non-ferrous metals, cement, fertilisers, shipbuilding facilities, urban water supply etc., the pre-approval procedure at the projects approval authority is replaced by a registration procedure.

B. Delegation of Approval Power to Local Level

Under the new Catalogue, the requirement to obtain the central governmental approval for 23 types of investment projects has been completely lifted, and more approval powers are delegated to the local governmental at the provincial level or below, which will contribute to further speeding up the approval process. These 23 types of projects include pumped-storage power stations, gas-fired power plants, thermal (non-coal) fired power plants, new ports, new general aviation airports, projects of expansion of airports with both military and civilian use, exploitation of iron ore and non-ferrous metal mines, new ethylene projects, certain hydropower stations, certain power grid projects, certain aircraft manufacturing projects, etc.

C. Higher Approval Thresholds for Foreign Investment

The chart below shows which types of approvals or registration steps are required for which types of investment and compares the situation under the new 2014 Catalogue with the 2013 Catalogue:

Approval Level	Approval or Registration	2014 Catalogue	2013 Catalogue
State Council	Registration	Total Investment \geq 2 billion	/
Competent Investment	Approval	<u>Encouraged Category</u> : Chinese shareholder majority or relative	<u>Encouraged Category</u> : Chinese shareholder majority or

Department of the State Council(NDRC)		majority control + total investment ≥ USD 1 billion <u>Restricted Category:</u> Total investment ≥ USD 100 million (excluding real estate projects)	relative majority control + total investment ≥ USD 300 million <u>Restricted Category:</u> Total investment ≥ USD 50 million (excluding real estate projects)
Provincial Government	Approval	<u>Restricted Category:</u> Real Estate Projects; Total Investment ≤ 100 million	<u>Restricted Category:</u> Real Estate Projects; Total Investment ≤ 50 million
Local Government	Approval	<u>Encouraged Category:</u> Chinese shareholder majority or relative majority control + Total Investment ≤ 1 billion	<u>Encouraged Category:</u> Chinese shareholder majority or relative majority control + Total Investment ≤ 300 million

D. Relaxation on Outbound Investment Requirements

For all outbound investments, unless the project involves a sensitive country, region or industry, registration with NDRC will be sufficient. “Sensitive countries and regions” means any country or region that has not established diplomatic relationship with China or is subject to international sanctions, or where there is a war or riots. “Sensitive industries” means foundational development of telecommunication systems, multi-regional water resource development and utilization, large-scale land development, main line power grids as well as media and other related industries.

Approval Level	Approval or Recordal	2014 Catalogue	2013 Catalogue
Competent Investment Department of the State Council(NDRC)	Approval	Projects involve sensitive countries, regions or industries	Chinese Parties’ investment amount is more than USD 1 billion and in any sensitive countries and regions or involving any sensitive industries.
	Registration	Investment by central government controlled enterprises (Central SOEs), and Investment by a local enterprise ≥ USD 300 million	Investment by central government controlled enterprises (Central SOEs), and Investment by a local enterprise ≥ USD 300 million

The new 2014 Catalogue is a welcome sign for foreign investors who are seeking more opportunities in the Chinese market and cooperation with Chinese counterparties.

2. China Adopts Amendments to Administrative Procedure Law

On 1 November 2014, the first amendment to PRC Administrative Procedure Law (“New APL”) has been released by the Standing Committee of the National People’s Congress since it was first promulgated in 1990. The newly revised law is

expected to enter into effect on the first day of May, 2015. The major changes in the amendment are aimed at removing the procedural obstacles that the citizen plaintiffs may face when filing administrative lawsuits with courts. The major changes are highlighted as follows:

A. Broadening the scope of the administrative acts that can be challenged

The amendment adds a new group of administrative acts that can be challenged by the plaintiff, particularly including the following: decisions on confirming the right of ownership in or the right to the use of natural resources; decisions on expropriation of private property or corresponding compensation; abuse of administrative powers resulting in the elimination or restriction of competition; illegally raising funds, disproportion of expenses or other unlawful obligations imposed on individuals, etc.

B. Normative documents (legal statutes) can be challenged

Under the currently existing legal framework, only specific decisions rendered by the administrative authorities can be challenged in an administrative litigation, and the court would not accept a claim to question the administrative rules and orders on which the aforesaid decisions are based, no matter how arbitrary they may be. The new APL replaces the term “specific administrative act” with the term “administrative act”, which allows plaintiffs to challenge not only specific decisions made by the administrative authorities, but in certain cases also the rules and regulations on which they are based. The new Article 53 prescribes that if a citizen, a legal person or any other organization that believes a normative document (规范性文件) issued by State Council departments, local governments or a department thereof, on which a specific administrative act is based, is not in accordance with law, may file a request for reviewing the normative document in the proceedings to challenge the relevant administrative act. However, laws promulgated by National People’s Congress, regulations enacted by the State Council, regulatory documents (规章) promulgated by the local governments and departments of State Council are excluded from the documents that can be reviewed.

C. Extension of the Statute of Limitation

Instead of the current 3-month statute limitation, after the new APL comes into effect, the plaintiff will have 6 months to file a complaint after he has knowledge of a disputed administrative act. This change will grant the private party more time in preparation for filing a lawsuit and to collect the necessary evidence.

D. Removes obstacles in case acceptance process

The new APL includes a series of provisions urging the court to accept cases that are submitted. For instance, Article 51 of new APL requires that the court shall receive the statement of claim and other submitted materials if the court cannot immediately decide whether the statement of claim is qualified or not and shall issue a written receipt stating the receipt date and make a decision within 7 days whether or not it will accept the case. If the statement of claim is not qualified, a ruling shall be issued to reject the case acceptance by addressing the reason for refusal. An appeal is possible against such ruling. Under the current vague legal provisions, the courts often choose to not even receive submission and they refuse to make any decision on whether the case is accepted, thereby depriving the plaintiff of any legal remedies.

Furthermore, if the statement of claim is incomplete in content or contains other errors, the court shall instruct and explain to the concerned party to improve the content and supplement the missing documents on a one-time basis. In the absence of the instructions and explanations, the court is not allowed to refuse to receive a statement of claim on the grounds of non-conformity with the formal requirements for a lawsuit. In the event of a refusal to receive a statement of claim or a failure to issue a written receipt after receiving a statement of claim or to notify the concerned party of the missing content or documents, the concerned party may file a complaint (投诉) with the people's court at the higher level.

The people's court at the higher level shall order the corrections to be made and impose penalties on the person-in-charge who is directly responsible and other persons who are directly liable for the violation. If the court neither accepts the case nor renders a refusal ruling, the concerned party may file a suit (起诉) with the people's court at the higher level. The higher court who finds the conditions for a lawsuit are satisfied, shall place the case on file and try the case or it may designate another court at lower level to accept the case.

E. Reference to Civil Procedure Law to fill legal loopholes in the APL

Article 101 of new APL makes a reference to the Civil Procedure Law to apply the latter's provisions regarding the statute of limitation, service of legal documents, property preservation, court hearings, mediation, suspension or termination of litigation, summary procedure or enforcement in the trial of administrative cases by people's courts, or regarding the supervision by people's procuratorates over the acceptance, trial, adjudication and enforcement of administrative cases, which are not directly regulated in the APL.

The newly revised APL is the expression of an attempt of the PRC government to improve the rule of law by cutting unwelcome ties between the governmental authorities and the courts while strengthening the rights of the plaintiffs in challenging administrative acts made by the authorities. The next few years will show whether the provisions of the new administrative procedure law are sufficient to bring real improvement to the current system, which is still fraught with frequent instances of arbitrariness and abuse of power by administrative authorities.

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