Guideline on Outbound Investment Promulgated by State Council of China on August 18, 2017

On August 18, 2017 the State Council of China issued a guideline to promote outbound investment and minimize associated risks for China (the "Guideline") as it seeks to stabilize and invigorate its economy.

According to the Guideline – jointly developed by the National Development and Reform Commission, Ministry of Commerce, People's Bank of China, and Ministry of Foreign Affairs – outbound investments made by eligible Chinese enterprises must be mindful of potential liabilities and risks, avoid investments in those sectors identified on the so-called Negative List, comply with applicable rules governing liabilities and risks, and cooperate with the relevant local authorities.

Under the Guideline, outbound investments have been divided into three categories, i.e., those that are eligible, those that are restricted, and those that are prohibited, as outlined below:

- Eligible enterprises will be supported and encouraged to make any of the following outbound investments:
  - Investment in infrastructure, which promotes construction and the inter-connection of surrounding infrastructure in China's Belt and Road Initiative.
  - Investment that exports China's superior technology and equipment.
  - Investment cooperation with overseas high-tech and advanced manufacturing enterprises, which will be encouraged to set up overseas investment in research and development centers.
  - Investment contributing to the exploration and development of overseas energy and resources through prudent cooperation, e.g. oil, gas, mineral, and other resources.
  - Investment cooperation in areas such as agriculture, forestry, husbandry and fishing.
  - Investment in services, e.g. commerce, trade, culture and logistics. Qualified financial institutions will be supported to establish overseas branches and service networks and to operate in accordance with law of compliance.
- Any outbound investment in the following sectors will be viewed as inconsistent with China's peaceful development, to its culture of win-win cooperation, and to its policies of control at the macro level, and therefore will be restricted:
  - Investment in sensitive countries and regions at war or without diplomatic relations with China or those that are restricted by bilateral or multilateral treaties or agreements concluded with China
  - Investment in real estate, hotels, movie theatres, entertainment industry and sport clubs
  - The establishment of an equity investment fund or investment platform without any specific industrial projects
  - Investment with the use of outdated production equipment that does not meet the technical standards of the country where the investment will be made
  - Investment that fails to comply with the environmental, energy consumption, and safety standards of the country where the investment will be made

  An outbound investment that falls into any of the first three categories above must be approved by the domestic government departments responsible for such outbound investment.
- Chinese enterprises are prohibited from being involved in any outbound investment that may jeopardize China's national interests or security, including:
  - Investment related to the output of unauthorized core military technology and products
  - Investment with the use of technology, craft and production that is prohibited from export by China
  - Investment in gambling, pornography and other prohibited industries
  - Investment prohibited by international treaties that have been concluded or participated in by China
  - Other investment that may jeopardize national interests and security

In addition, the relevant government departments are required to take action to improve the authentication and compliance review of all outbound investments so as to prevent false investments, to routinely issue "reports on the convenience status of country investment management" to alert and inform regarding any significant risks related to the investment, and to supervise the safety and risk assessment of outbound projects.

The Guideline codify several concepts in existing regulatory policy statements. Moving forward, Chinese enterprises should work closely with their advisors to carefully assess the regulatory risks by determining the classification of their intended investments.

Contact

James L. Hsu
Partner
Corporate
T +1 213 689 5170
E james.hsu@squirepb.com

Daniel F. Roules
Partner
Corporate
T +86 21 6103 6309
E daniel.roules@squirepb.com