More hurdles removed for Chinese outbound investments

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The investment directive issued by the Chinese government in December 2013 has led to a wave of new regulations aimed at promoting Chinese investments abroad. The latest regulation comes from the Ministry of Commerce, which has replaced a significant part of its approval procedure by a filing process. Furthermore, the timeframe for approval has been shortened, forms have been simplified, and the whole process has been partly decentralised. This is good news not only for Chinese investors, but also for non-Chinese sellers, who will have fewer reasons to be uncertain about Chinese investments abroad.

We reported in February 2014 on the release of the *Catalogue of Investment Project subject to Government Approvals* by the PRC State Council. The Catalogue provided that only investments of USD 1 billion or more, or investments involving sensitive industries, would still require verification by the Chinese government, whereas other outbound investment would only require a filing. But the investment directive had to be implemented by various regulators before it could take effect.

In May 2014, we mentioned the new implementation rules for Chinese outbound investments transactions issued by the National Development and Reform Commission (NDRC). Under these new rules, only transactions with a value exceeding USD 1 billion still require the approval of the central NDRC office or its superior, the Chinese State Council, while transactions with a value below USD 1 billion only require filing with the competent NDRC offices.

Very much in line with these two regulations, new *Administrative Measures for Outbound Investment* issued by the Ministry of Commerce (MOFCOM) took effect on 6 October 2014. Notably, MOFCOM's new measures require filing rather than approval of outbound investments, with investment in sensitive countries or sensitive industries as the only exceptions. The timeframe for approval has also been shortened to 20 working days for state-owned enterprises and 30 working days for other companies. In addition, the forms have been simplified, and MOFCOM departments at provincial levels will take over the workload from departments at the central level.

To manage the uncertainties involved in securing Chinese outbound approvals, non-Chinese sellers often take into account a "China premium" when valuing bids by Chinese investors. This means that Chinese investors are expected to pay more in order to be considered attractive buyers. NDRC and MOFCOM's new rules still leave significant discretionary powers to authorities and therefore do not signal the end of the China premium. However, the role of a Chinese investor in a sales process should become more predictable and these changes should therefore be welcomed by non-Chinese sellers.