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Chinese to English: CIRCULAR OF THE NDRC ON FURTHER STRENGTHENING AND REGULATING THE ADMINISTRATION OF FOREIGN INVESTMENT PROJECTS

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Source text – Chinese

国家发展改革委  
发改外资[2008]1773号

国家发展改革委关于进一步加强和  
规范外商投资项目管理的通知

各省、自治区、直辖市及计划单列市、  
副省级省会城市、新疆生产建设兵团  
发展改革委、经贸委（经委）：

自2004年我国投资体制改革以来，外商投资项目实行了核准制度，对进一步完善投资环境、提高利用外资质量、加强宏观调控发挥了积极作用。但是，一些地方仍存在着未严格执行国家有关规定，对外商投资项目管理失当的问题。有的外商投资项目未经核准即已开工建设，有的未严格按照核准内容进行建设，有的投资者借国际资本市场波动、我国汇率政策调整之机，采取虚假合资、虚报总投资、设立空壳公司等方式，以外商直接投资的名义调入资金，并将资本金结汇挪作他用，谋取不正当利益，对我国经济健康发展和国际收支平衡带来潜在的风险。为进一步规范外商投资项目管理，防止外汇资金异常流入，根据《国务院关于投资体制改革的决定》（国发〔2004〕20号）和《国家发展改革委外商投资项目核准暂行管理办法》（委第22号令）以及其他相关法律法规规章的有关规定，现将有关事项通知如下：

一、严格执行外商投资项目核准制。各级发展改革部门要从维护经济安全、合理开发利用资源、保护生态环境、优化重大布局、保障公共利益、防止出现垄断、投资准入、资本项目管理等方面，对外商投资项目进行核准。要坚持外商投资先核准项目，再设立企业的原则，防止设立空壳公司。各类外商投资项目，包括中外合资、中外合作、外商独资项目、外商购并境内企业项目、外商投资企业（含通过境外上市而转制的外商投资企业）增资项目和再投资项目等，均要实行核准制。

二、加强对外商投资项目真实性的审

Translation – English

NATIONAL DEVELOPMENT AND REFORM COMMISSION  
Fa Gai Wei Zi [2008] No. 1773

**Circular of the NDRC (National Development and Reform Commission) on Further Strengthening and Regulating the Administration of Foreign Investment Projects**

Development & Reform Commissions and Foreign Economic Relation & Trade Commissions of provinces, autonomous regions, municipalities under the direct control of the Central Government, cities with independent development plans, provincial capitals with sub-provincial status and Xinjiang Construction and Production Corps,

Since China's reform of its investment regime in 2004, a ratification system has been instituted for foreign investment projects, which has had positive effect on further improving China's investment environment, enhancing its efficiency in using foreign capital and strengthening its macro control. However, in some places, the administration of foreign investment projects has not been conducted properly in strict accordance with the State's relevant provisions. Some foreign investment projects started without being ratified. Some are not carried out as per the ratified plans. Some investors, by taking advantage of the current fluctuations at the international capital market and China's adjustment of its foreign exchange policy, introduce capital to China in the name of foreign direct investment by way of fabricating joint venture initiatives, inflating the total investment or establishing shell companies, and misappropriate such capital for improper gains, which brings potential risks to China's healthy economic development and balance of international payments. With the aim of further regulating the administration of foreign investment projects and checking the abnormal influx of foreign exchange, in accordance with the Decision of the State Council on Reform of Investment System (Guo Fa [2004] No. 20), Tentative Administrative Measures of the NDRC on Ratification of Foreign Investment Projects (Decree No. 22 of the NDRC) and other relevant laws and regulations, we hereby notify you of the following matters:

1. Strictly implement the ratification system for foreign investment projects. Development and reform departments at all levels shall ratify foreign investment projects based on the criteria of maintaining economic safety, rational exploitation and utilization of resources, eco-environmental protection, optimal deployment of important projects, protecting public interest, anti-monopoly, market access and capital project management. The rule of "no enterprise shall be established before ratification of the foreign investment project" must be strictly followed to prevent the establishment of shell companies. The ratification system applies to all kinds of foreign investment projects including Sino-foreign equity joint ventures, Sino-foreign cooperative joint ventures, solely foreign-invested projects, merger with and acquisition of domestic enterprises by foreign enterprises, and capital increase and re-investment of foreign-invested enterprises (including those converted to foreign-invested enterprises by way of overseas listing).

2. Tighten up the authenticity review of foreign investment projects. When ratifying a project, development and reform departments at all

查。各级发展改革部门在核准项目时，要根据项目建设规模和主要内容等核定项目总投资，必要时可委托有资质的咨询机构进行评估；注意把握并监控境外资金的流向，严格外商投资项目总投资与资本金的差额管理，落实融资方案，需要对外举债的，要严格执行国家有关外债管理的规定；加强对境外投资者背景和资信情况的审查，对背景不明、资信达不到要求或材料不完整的，要严格审查，防止无真实投资背景的外汇资金流入。

三、落实外商投资项目分类分级管理制度。按照《外商投资产业指导目录》，总投资（包括增资额，下同）1亿美元及以上的鼓励类、允许类项目和总投资5000万美元以上的限制类项目，由国家发展改革委核准项目申请报告；总投资1亿美元以下的鼓励类、允许类项目和总投资5000万美元以下的限制类项目由地方发展改革部门核准，其中限制类项目由省级发展改革部门核准，此类项目的核准权不得以任何理由、任何方式下放。

四、规范新开工项目管理，严格各项项目核准条件。各级发展改革部门要按照《国务院办公厅关于加强和规范新开工项目管理的通知》（国办发〔2007〕64号）精神，严格规范新开工外商投资项目条件。项目单位向发展改革部门报送项目申请报告，涉及规划选址、用地预审、环评审批的，应附送相关文件。有关文件办理事项，要执行相关主管部门规定的程序和权限。要严格限制严重污染环境和高能耗、高物耗、资源消耗大的项目，未按要求取得规划选址、用地预审、环评审批和节能评估等文件的项目，以及不符合《国家发展改革委外商投资项目核准暂行管理办法》（委第22号令）核准要求的项目，各级发展改革部门不得核准。各级发展改革部门要与国土资源、环境保护、住房和城乡建设、商务（外经贸）、外汇管理、海关和税务等部门加强沟通，各司其职，形成合力，健全对外商投资项目管理的联动机制。

五、加强对已核准项目的监督检查。在做好外资项目统计和信息管理的同时，督促项目建设单位按照项目核准文件的要求开展工作，强化监督检查。对于未经合规核准的外商投资项

levels shall appraise and determine the total investment of the project on the basis of its construction scale and main construction items, and may engage a qualified consultant to appraise the project, if necessary. The departments shall follow up and monitor the flow direction of overseas funds, tighten up administration of the difference between the project's total investment and its registered capital. When reviewing the financing plan of a project, if overseas borrowing is needed, the development and reform department shall strictly follow the State's relevant provisions on foreign debt. The departments shall carefully review the overseas investors' background and credit standing, and pay even more attention to projects where the investors are of unclear background and poor credit standing. All the above measures are for the purpose of checking the inflow of foreign exchange for which there is not a bona fide underlying investment project.

3. Implement the classified administration system for foreign investment projects. In accordance with the Catalogue of Industries for Guidance of Foreign Investment, applications for encouraged and permitted projects with a total investment (including capital increase, same below) of 100 million US dollars or above and restricted projects with a total investment of 50 million US dollars or above shall be ratified by the National Development and Reform Commission. Encouraged and permitted projects with a total investment of less than 100 million US dollars and restricted projects with a total investment of less than 50 million US dollars shall be ratified by the local development and reform departments, among which, restricted projects shall be ratified by provincial-level development and reform departments and such ratification right shall not be delegated down for any reason, in any manner, whatsoever.

4. Regulate the administration of newly-started projects and adopt tighter ratification criteria. Development and reform departments at all levels shall, in accordance with the Circular of the General Office of the State Council on Strengthening and Regulating the Administration of Newly-Started Projects (Guo Ban Fa [2007] No. 64), ensure that newly-started foreign investment projects fully meet the conditions set forth therein. If the application the project company submits to the development and reform department contains site planning and selection, pre-examination of land and EIA (Environmental Impact Assessment) review, the project company must also provide relevant approval documents. Such approval documents shall be obtained in accordance with and subject to the procedures and power limits of the competent administrative departments. Projects that are highly pollutive, energy intensive, material intensive or resource intensive shall be strictly restricted. Development and reform departments at all levels shall not ratify projects that fail to obtain the required approval documents on site planning and selection, pre-examination of land, EIA review and energy efficiency assessment or projects that do not meet the requirements set forth in the Tentative Administrative Measures of the NDRC on Ratification of Foreign Investment Projects (Decree No. 22 of the NDRC). Development and reform departments at all levels shall improve their communication with departments of land and resources, environmental protection, housing and urban-rural development, commerce (foreign economic relation & trade), foreign exchange administration, Customs and taxation. All departments above shall each perform its duties diligently, and collaborate to further improve the linkage mechanism for the administration of foreign investment projects.

5. Strengthen the supervision and inspection of ratified projects. While managing the statistics and information of foreign investment projects, development and reform departments at all levels shall request project companies to carry out the projects as per the project ratification documents, and strengthen their supervision and inspection of such

目，或以化整为零、提供虚假材料等不正当手段取得核准文件的项目，或不按项目核准文件要求进行建设，已调入境内的资金不用于建设项目的，应及时纠正，严重违规的，可依法撤销项目核准文件并责令其停止建设。存有上述问题的项目，一经发现，不得享受采购设备税收减免等相关优惠政策，对其上市或发债的申请不予支持。

各地发展改革部门要统一认识，自觉维护国家宏观调控的大局，进一步深化投资体制改革，依法加强和规范对外商投资项目的管理。同时，要努力提高工作效率，不断增强服务意识，维护投资者的正当权益。对于符合国家产业政策和相关要求的项目，要积极给予指导和支持，尽快办理各项手续，主动帮助解决项目建设过程中遇到的问题和困难，引导外商投资投向国家鼓励的产业和地区，推动产业结构优化升级，提高利用外资的质量和水平。各类投资主体也要严格执行国家相关法律法规的规定，认真履行项目核准程序，自觉接受监督和管理。

主题词：外资 项目 管理 通知

国家发展改革委  
二〇〇八年七月八日

projects. Foreign investment projects that fall under any of the following categories shall rectify their misdeeds in a timely manner: (1) projects that have not been duly ratified; (2) projects that obtained the ratification documents by a piecemeal approach (i.e., splitting a big project into smaller ones) or by providing falsified or fabricated materials; and (3) projects that have not been constructed as per the ratification documents and projects where capital introduced from overseas is not used on project construction. If the violation is serious, the project may be revoked of its ratification document or be ordered to stop construction. Projects with the above misdeeds, once discovered, may not enjoy tax reduction or exemption for equipment purchase or other preferential treatments, and their application for equity or debt offering will not be approved.

Development and reform departments at all levels shall study and follow the State's rules and regulations, voluntarily support the State's macro control system, further carry out the investment system reform and strengthen and regulate the administration of foreign investment projects in accordance with the law. Meanwhile, the departments shall take efforts to improve their work efficiency, continuously strengthen their service consciousness and protect the investors' legitimate interests. They shall provide guidance and support to projects that conform to the State's industrial policies and other relevant requirements, handle relevant procedures for the projects in an efficient manner, and proactively help these projects solve problems and difficulties they encounter during construction. The departments shall try to guide foreign investment to state-encouraged industries and regions to facilitate the optimization and upgrade of China's industrial structure and improve China's efficiency in using foreign investment. Investors of all kinds shall comply with the State's relevant laws and regulations, strictly follow the project ratification procedures and voluntarily accept the supervision and administration of the relevant departments.

Key words: foreign investment, project, administration, circular

National Development and Reform Commission  
July 8, 2008