

China Amends the Catalogue of Industries for Guiding Foreign Investment

On 29 December 2011, the PRC National Development and Reform Commission (NDRC) and the PRC Ministry of Commerce (MOFCOM) published the final version of the Catalogue of Industries for Guiding Foreign Investment (the 2011 Catalogue), which will become effective on 30 January 2012 and repeal and supersede its 2007 version. The 2011 Catalogue will have impact on a number of industries, including the following:

- energy;
- medical and bio-products;
- environmental products;
- business services;
- wholesale, retail and logistics;
- real estate;
- financial services;
- educational institutions; and
- chemicals.

Key areas of amendments and updates

Set out below are the key changes of the above mentioned industries.

- **Energy** Newly added encouraged items include:
 - » “exploration for and production of conventional and unconventional forms of energy (such as subsea natural gas hydrate, oil shale, etc.)”; and
 - » energy conservation, such as “projects manufacturing key parts of vehicles using new energy, electric vehicle batteries and equipment for pumped storage power stations”.

The 2011 Catalogue has also downgraded the manufacturing of certain nuclear power plant equipment from the Encouraged Category to the Permitted Category.

- **Medical and bio-products** New encouraged items include such medical and bio-products as:
 - » “vaccines to prevent cervical cancers, malaria and foot-hand-and-mouth disease”; and
 - » “manufacturing of multi-layer co-extrusion non-PVC infusion bag blown film equipment”, with a view to gaining access to the state-of-the-art medical and bio-technologies available around the world.
- **“Green” products** Newly added encouraged items are industries and sectors of manufacturing environmentally friendly products and applying technologies to comprehensive utilization of natural resources or used goods, including, among others:
 - » “recycling of construction refuse and gypsum as industrial by-products”;
 - » “development and manufacturing of comprehensive utilization equipment for alumina red mud and tailings”;
 - » “manufacturing of equipment to remanufacture used textiles and used mechanical-electric products”; and
 - » “manufacturing of equipment for recovery of offshore spilled oil”.

- **Business services** This is one of the key areas of development under the 12th Five-Year Plan. The changes include:
 - » re-categorizing “calling centres” from the Encouraged Category to the Permitted Category; and
 - » adding “provision of logistics information” and “intellectual property consultancy services” to encouraged items.
- **Wholesale, retail and logistics** The 2011 Catalogue has upgraded several types of commercial and trading business. The changes include:
 - » adding “low temperature distribution of fresh and live agricultural produces” and “rural franchised distribution system” to the Encouraged Category; and
 - » re-classifying “franchise”, “commission operation”, “business management”, “auction” and “wholesale, retail and distribution of automobiles” from the Restricted Category to the Permitted Category.

Finally, it is not necessary for a Chinese party in a cooperative joint venture for distribution of audio and video products (films excepted) to hold a majority interest.
- **Real estate** To comply with general macro-economic adjustment policy in respect of real estate property development, “construction and management of villas” has been re-categorized from the Restricted Category to the Prohibited Category, thus banning foreign investment in this type of real estate business altogether.
- **Financial services** Under the 2011 Catalogue, “the establishment of finance lease companies” has been relaxed and re-categorized from the Restricted Category to the Permitted Category. It is also worthwhile to note that “establishment of venture capital investment companies” has been added to the Encouraged Category. All these amendments suggest further liberalization of financial services sector for foreign investment.
- **Educational institutions** In recognition of the lasting benefit of education in the economic development, the 2011 Catalogue has added “establishment of occupational skills training institutions” in the Encouraged Category and reclassified “establishment of ordinary senior high schools” so that foreign investors are permitted to invest in the mode of a cooperative joint venture only.
- **Chemicals** A number of areas will be impacted, including:
 - » downgrading “ethylene manufacturing plants” from the Encouraged Category to the Permitted Category while “manufacturing of key elements of whole set equipment with higher output capacity of ethylene” has been added in the Encouraged Category; and
 - » downgrading “processing and manufacturing of downstream ethylene products, and comprehensive utilization of ethane C5-C9 by-products (excluding butadiene synthetic rubber)” and “production of corvic with an annual output of 200,000 tons or more (ethene method)” from the Encouraged Category to the Permitted Category.

Relationship with other rules

It is important to note that if different treatment is granted under a Closer Economic Partnership Arrangement (CEPA) between the PRC central government and the Hong Kong government or between the central government and the Macao SAR government, or under the Cross-Straits Economic Cooperation Framework Agreement between mainland and Taiwan authorities, as amended from time to time, such treatment will prevail over any relevant items listed in the 2011 Catalogue. This exemption also applies to any different provisions under agreements between the PRC and other countries in respect of free trade zones and to other specific industry policies formulated by the PRC State Council.

Closing comments

It appears that the 2011 Catalogue has, to a large extent, taken into account substantial changes in domestic economic developments and the fulfilment of PRC's commitments under the WTO accession documents since 2007. It has addressed focused areas of national development under the 12th Five Year Plan adopted by the National People's Congress in March 2011.

Compared to the 2007 version, the 2011 Catalogue has set even higher standards for certain industries and sectors for foreign investments projects to meet in order to enjoy benefits of the Encouraged Category. Foreign investors must satisfy the approval authorities that their projects are capable of manufacturing relevant products of a larger output and/or better specifications, such as wind power generators, centrifugal pumps, colour printing machines, diesel engines, digital cameras and various car parts. This indicates that the PRC has now become more selective in attracting foreign investment and prefers quality over quantity.

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