

# Interim Administrative Measures for the Verification and Approval of Foreign Investment Projects

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## Chapter 1: General Provisions

**Article 1** These Measures are formulated in accordance with the Administrative Licensing Law of the People's Republic of China and the Decision of the State Council Concerning Investment System Reform in order to standardize the administration of verification and approval of foreign investment projects.

**Article 2** These Measures shall be applicable to the verification and approval of various foreign investment projects, such as Sino-foreign equity joint venture enterprises, Sino-foreign cooperative joint venture enterprises, wholly foreign-owned enterprises, foreign merger and acquisition of enterprises in China, and foreign-invested enterprises' capital increase.

## Chapter 2: Verification and Approval Authority and Its Authority Limit

**Article 3** According to the categorization of the Industry Catalog for Guiding Foreign Investment, for projects under the encouraged or permitted category with total investment (including the investment increase) no less than USD100 million and for projects under the restricted category with total investment no less than USD50 million, the project application reports shall be verified and approved by the National Development and Reform Commission ("NDRC"); for projects under the encouraged or permitted category with total investment no less than USD500 million and for projects under the restricted category with total investment no less than USD100 million, the project application reports shall, after being examined and verified by the NDRC, be submitted to the State Council for verification and approval.

**Article 4** Projects under the encouraged or permitted category with total investment below USD100 million and projects under the restricted category with total investment below USD50 million shall be verified and approved by the local departments for development and reform. Restricted projects shall be verified and approved by provincial departments for development and reform. The verification and approval authority for such type of projects shall not be transferred to a lower level. If a local government has otherwise formulated, in accordance with the relevant regulations, any provisions on the verification and approval of projects referred to in the preceding paragraph, such provisions shall apply.

## Chapter 3: Project Application Report

**Article 5** Any application report on a foreign investment project to be submitted to the NDRC shall include the following content:

- (1) Project name, duration of operation, and basic information on the investors;
- (2) Project construction scale, primary construction content and product(s), main technologies and process applied therein, target market for the product(s), and planned number of work staff;
- (3) Project construction location, requirements for land, water, energy, and other resources as well as consumption of the primary raw materials;
- (4) Environmental impact assessment;
- (5) Prices for the public products or services involved;
- (6) Total investment of the project, registered capital and the contribution of each party, form of capital contribution and financing plan, equipment required to be imported and the costs thereof.

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**Article 6** Any project application report to be submitted to the NDRC shall be accompanied by the following documents:

- (1) The enterprise registration certificate (business license), business registration certificate and the latest enterprise financial statement that is audited (including the balance sheet, profit and loss statement, and cash flow statement), and the credit worthiness certificate issued by the bank where the account is opened of each of the Chinese and foreign investors thereto;
- (2) The letter of investment intent, and in the case of a capital increase, merger, or acquisition project, the resolution of the board of the company;
- (3) Letter of financing intent issued by a bank;
- (4) Written opinions on the environmental impact assessment issued by the provincial or State administrative authority for environmental protection;
- (5) Written opinions on the planned location issued by the provincial planning department;
- (6) Written opinions on the pre-examination on the use of land for the project, as issued by the provincial or State land and resources department; and
- (7) Confirmation document(s) issued by the relevant authority, if the capital contribution is made in form of State assets or land use rights.

#### **Chapter 4: Verification and Approval Procedures**

**Article 7** With respect to projects that are respectively subject to the verification and approval of the NDRC and the State Council according to verification and approval authority, the project application report shall be submitted by the project applicant to the provincial department for development and reform at the project place, and shall be submitted to the NDRC after being verified and approved by the provincial department for development and reform. Specially designated enterprise groups in the State plan and centrally administered enterprises may directly submit their project application reports to the NDRC.

**Article 8** When verifying and approving an application report and requiring to seek opinions from the relevant industry authority under the State Council, the NDRC shall issue a letter for seeking opinions to the relevant industry authority under the State Council, with the relevant materials attached thereto. The relevant industry authority under the State Council shall, within seven working days of receiving the aforesaid materials, provide written opinions to the NDRC.

**Article 9** The NDRC shall, within five working days of its acceptance of a project application report, entrust a qualified consultancy agency to conduct evaluation and proof on the key issues required to be evaluated and proved. The consultancy agency that has accepted the entrustment shall provide an evaluation report to the NDRC within the specified time limit.

**Article 10** The NDRC shall, within 20 working days of its acceptance of a project application report, complete the verification and approval on the project application report or submit the examination and approval opinions to the State Council. In the case of failure to make a verification and approval decision or provide examination and approval opinions within 20 working days, the period may be extended for ten additional working days subject to approval of the person in charge from the NDRC. The reasons for such extension shall also be notified to the project applicant. The time limit for verification and approval shall exclude the time for entrusting a consultancy agency to conduct evaluation.

**Article 11** The NDRC shall issue, to the project applicant, a written document on verification and approval for a project it has verified and approved. In the case of disapproval on a project, the project applicant shall be notified in the form of a written decision, accompanied by stating the reasons and informing the project applicant of the right granted thereto to apply for administrative reconsideration or file an administrative action pursuant to the law.

#### **Chapter 5: Conditions and Legal Force of Verification and Approval**

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**Article 12** The conditions of the NDRC for verification and approval on project application reports:

- (1) Conforming to the relevant State laws and regulations and the provisions of the Industry Catalog for Guiding Foreign Investment and the Catalogue of Prioritized Industries for Foreign Investment in the Mid-and-Western Region of China;
- (2) Meeting the requirements of the mid-and-long-term planning for national economic and social development, industry planning, and industry structure readjustment policies;
- (3) Conforming to the public interest and the relevant State provisions on anti-monopoly;
- (4) Meeting the requirements of land utilization planning, overall urban planning, and environmental protection policies;
- (5) Meeting the State requirements for technology and process standards; and
- (6) Conforming to the relevant State provisions on capital project management and foreign debt management.

**Article 13** The project applicant shall, in accordance with the law, go through the formalities related to land use, urban planning, quality supervision, safe production, resource utilization, enterprise establishment (or change of registration), capital project management, equipment importation, and applicable tax policies, etc. by presenting the verification and approval document issued by the NDRC.

**Article 14** The verification and approval document issued by the NDRC shall specify the term of validity thereof. Within the term of validity, the verification and approval document shall be the basis for the project applicant to go through the relevant formalities listed in Article 13 of the Interim Administrative Measures for Verification and Approval on Foreign Investment Projects. Upon expiration of the term of validity, the project applicant shall present the document issued by the NDRC for approving the time limit extension simultaneously when going through the aforesaid formalities.

**Article 15** The departments for land, urban planning, quality supervision, safe production supervision, industry and commerce, customs, taxation, foreign exchange control, etc. shall not handle the relevant formalities for any foreign investment project that has not been verified and approved.

**Article 16** Where a project applicant obtains the verification and approval document for the project by improper means such as dividing the project or providing false materials, the NDRC may withdraw the verification and approval document issued for such project.

**Article 17** The NDRC may conduct supervision and inspection on the implementation of a project by the project applicant and the verification and approval on a foreign investment project by a local department for development and reform, and may take measures on any issue that is subject to investigation and ascertainment in accordance with the law.

## **Chapter 6: Change; Verification and Approval of a Change**

**Article 18** An application for change shall be filed with the NDRC where any of the following circumstances arises to a project verified and approved by the NDRC:

- (1) Change of the construction location;
- (2) Change of an investor or equity interests;
- (3) Change of the main construction details and a primary product;
- (4) The total investment exceeds by 20% or more of the originally verified and approved total investment; or
- (5) Any other circumstances where change is required by the relevant laws and regulations and industrial policies.

**Article 19** With respect to the procedures for verification and approval of a change, the provisions of Chapter 4 hereof shall apply as the reference.

## **Chapter 7: Supplementary Provisions**

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**Article 20** For the purpose of timely knowledge of the project verification and approval information, the project approval document for a locally verified and approved foreign investment project with total investment accounting for USD30 million or more, shall be forwarded by the relevant provincial department for development and reform to the NDRC within 20 working days of the project approval date.

**Article 21** Each provincial department for development and reform shall formulate its respective administrative measures based on the Provisions Guiding Foreign Investment Direction (Order No. 346 of the State Council) and the provisions of these Measures.

**Article 22** With respect to the investment projects established by investors from the Hong Kong Special Administrative Region, the Macau Special Administrative Region, and the Taiwan region, these Measures shall apply as the reference.

**Article 23** The NDRC shall be responsible for the interpretation of these Measures.

**Article 24** These Measures shall take effect as of 9 October 2004. In the case of any conflict between any previous provisions on the examination and approval of foreign investment projects and these Measures, these Measures shall prevail.