

Deepening Reforms: China’s New Catalogue of Investment Projects Subject to Governmental Examination and Approval Issued

On December 12, 2016, China’s State Council promulgated its “Circular on Issuing the Catalogue of Investment Projects Subject to Governmental Examination and Approval (2016 Version)” (“**2016 Catalogue**”). The 2016 Catalogue came into force on the same day. Comparing to the 2014 Catalogue, the 2016 Catalogue removes 2 approval requirements and delegates the approval competence for 15 types of projects from the national level to the provincial level.

Background

The Catalogue serves as a key legal authority for governmental administration concerning fixed assets investment projects (such as new construction or extension of an existing construction project). The Catalogue lists the fixed assets investment projects within and outside China that are subject to prior governmental examination and approval. Other fixed assets investment projects, which are neither listed on the Catalogue nor otherwise restricted or prohibited by other statutory provisions, shall only be filed with the competent governmental authorities (i.e. Development and Reform Committee – “**DRC**”). In addition to such DRC’s project approval or filing, a foreign-invested fixed assets project shall also be approved by or filed with the competent commercial authorities as legally required for establishing and modifying foreign-invested enterprises (“**FIE**”; please also refer to our newsletter at: <https://china.taylorwessing.com/en/a-new-era-from-approval-to-filing-china-streamlines-foreign-direct-investment-process>).

Major developments in the 2016 Catalogue

Enhancing the approval thresholds for foreign-invested projects

With respect to foreign-invested projects the 2016 Catalogue significantly enhances the approval thresholds for foreign-invested fixed assets projects (see the table below). The 2016 Catalogue no longer requires governmental examination and approval for certain foreign-invested projects that are classified as the “encouraged” projects by the “Catalogue for Guidance of Foreign-Invested Industries” (“**FIE Catalogue**”) but with foreign shareholding restrictions. This is aimed at harmonizing the 2016 Catalogue and the FIE Catalogue in the context of the newly introduced negative list administration system for foreign investment. According to the new draft FIE Catalogue published on December 7, 2016 (please also refer to our newsletter at: <https://china.taylorwessing.com/en/a-more-structured-world-the-birth-of-fie-negative-list>), the current encouraged projects with foreign shareholding restrictions will be classified as “restricted” projects in the near future and shall be subject to relevant approvals.

2014 Catalogue	2016 Catalogue	Competent Authority	Approval
Encouraged projects listed on the FIE Catalogue, which require Chinese party’s (relative) majority, with a total investment (including increased investment) of USD 1 billion or more	/	National Development and Reform Committee (“ NDRC ”)	

Restricted projects (excluding real estate projects) listed on the FIE Catalogue with a total investment (including increased investment) of USD 100 million or more	Restricted projects listed on the FIE Catalogue with a total investment (including increased investment) of USD 300 million or more	NDRC
If the total investment (including increased investment) of the above projects to be approved by the NDRC amounts to USD 2 billion or more	Restricted projects listed on the FIE Catalogue with a total investment (including increased investment) of USD 2 billion or more	NDRC and to be filed with the State Council
Restricted projects listed on the FIE Catalogue with a total investment (including increased investment) of less than USD 100 million and all real estate projects	Restricted projects listed on the FIE Catalogue with a total investment (including increased investment) of less than USD 300 million	Provincial governments
Encouraged projects listed on the FIE Catalogue, which require Chinese party's (relative) majority, with a total investment (including increased investment) of less than USD 1 billion	/	Local governments

If a foreign-invested fixed assets project does not meet any of the above thresholds but belongs to the projects listed on the 2016 Catalogue generally requiring a prior governmental examination and approval regardless of their investors, such projects shall also be subject to approval.

Growing weight of industry policy and national plan

The 2016 Catalogue has again attached high importance to industry policy and national development plan. For instance, in the automotive industry new fuel vehicle manufacturing projects shall not be approved in principle. New establishment of new energy vehicle (“NEV”) manufacturing enterprises shall not be approved unless having key technology (e.g. dynamical system) and R&D capability for finished vehicles. While new Sino-foreign passenger vehicle production projects shall be approved by the State Council, new establishment of all-electric NEV manufacturing enterprises shall be approved by the NDRC and other automotive projects shall be subject to provincial government’s approval.

Another example is the chemical industry. The 2016 Catalogue has clearly prohibited petroleum refining project as well as new ethylene, PX, MDI and coal methanol projects unless they are included in the relevant national development plan.

Delegation of approval competence

As one significant progress of the 2016 Catalogue, the approval competence for 15 types of projects is delegated from the national level to the provincial level. Such projects mainly include:

- Industrial production, such as petroleum refining, new coal-to-olefins projects, new coal methanol projects with annual production more than 1 million ton, mining, refinery and deep processing of rare earth, etc.;

- Infrastructure construction, such as new construction of railway, highway, bridges, tunnels, petro/gas/coal berths, container wharf, navigation power junction, large-size theme park, etc.

Provincial governments are entitled to issue their respective provincial project approval catalogues and to further delegate their approval powers. However, projects involving major planning or allocation and development of main resources within a province shall generally be approved by the provincial government.



Dr. Guang Li
Partner | Munich



Meng Yi
Associate | Beijing

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Email to the editor: shanghai@taylorwessing.com

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TAYLOR WESSING PARTNERSCHAFTSGESELLSCHAFT

von Rechtsanwälten, Steuerberatern, Solicitors und Avocats à la Cour mbB
Sitz Düsseldorf, AG Essen, PR 1530

TAYLOR WESSING Shanghai Representative Office

Unit 1509, United Plaza, 1468 Nanjing West Road
Jing'an District, Shanghai 200040, China

TAYLOR WESSING Beijing Representative Office

Unit 2307, West Tower, Twin Towers, B-12 Jianguomenwai Avenue
Chaoyang District, Beijing 100022, China

TAYLOR WESSING Hong Kong

21st Floor, 8 Queen's Road Central
Hong Kong, China
Website www.taylorwessing.com

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