



漢坤律師事務所  
HAN KUN LAW OFFICES

# Newsletter

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## Legal Updates

1. Summary of Catalogue of Investment Projects Subject to the Approval of the Government (2014 Version)
2. China Allows Foreign Investors to Establish For-Profit Elderly Care Institutions

## Legal Updates

### 1. Summary of Catalogue of Investment Projects Subject to the Approval of the Government (2014 Version) (Authors: Songsong GAO, Luyi LI)

In order to further deepen the reform of investment system and continue to streamline administration and delegate power, the State Council issued the Circular of the State Council on Promulgating the Catalogue of Investment Projects Subject to the Approval of the Government (2014 Version) (the “Circular”) on October 31, 2014, according to which the approval for certain projects has been canceled and the authority for approving certain projects has been delegated to governments at lower level, involving a total of 38 types of investment projects.

According to the statistics of National Development and Reform Committee (the “NDRC”), after having been reduced by 60% by Catalogue of Investment Projects Subject to the Approval of the Government (2013 Version) (the “2013 Catalogue”) in 2013, the number of projects subject to approval has been further reduced by 40% by the newly issued Catalogue of Investment Projects Subject to the Approval of the Government (2014 Version) (the “2014 Catalogue”). After the aforementioned two amendments in 2013 and 2014, the number of projects to be approved at central level has been reduced by 76%.

Compared with the 2013 Catalogue, the main changes and updates brought by the 2014 Catalogue are as follows:

#### Further Reduce the Scope of Projects subject to Approval

The approval for the following investment projects has been canceled or deleted by the 2014 Catalogue:

No.	Investment Projects	2013 Catalogue	2014 Catalogue
1.	Iron-smelting, Steel-making and Hot-rolling Projects Generating Additional Production Capacity	Approval by Competent Investment Authority (“CIA”) under the State Council (“ <b>Approval by CIA</b> ”)	Approval Cancelled (subject to filing <sup>1</sup> , the same below)
2.	Electrolyse Aluminum Projects Generating Additional Production Capacity, Newly Built Aluminum	Approval by CIA	Approval Cancelled

<sup>1</sup> According to the *Decision of the State Council on Reforming the Investment System*, (i) investment projects not listed in the *Catalogue of Investment Projects Subject to the Approval of the Government* shall be, unless otherwise provided by the State, filed with the competent investment department of local government; (ii) the specific implementation measures for the filing of investment projects shall be formulated by provincial governments; (iii) the investment department of the State Council shall strengthen guidance to and supervision over the filing work to prevent local government carrying out examination and approval in the name of filing.

	Oxide Projects		
3.	Projects of Newly Built Vessel Building Facilities (Berths, Docks) of 0.1 Million Tons or Above	Approval by CIA	Approval Cancelled
4.	Cross-Province (District, Municipality) Projects with Daily Transportation of Water of 0.5 Million Tons or Above	Approval by CIA	Approval Cancelled
5.	Projects of Exploration of Iron Mines at a Scale of Identified Resource Reserve of 50 Million Tons or Above	Approval by CIA	Approval Cancelled
6.	Potassium Ore Fertilizer and Phosphate Ore Fertilizer Projects	Approval by Provincial Governments	Approval Cancelled
7.	Cement Projects	Approval by Provincial Governments	Approval Cancelled
8.	Banknote Printing, Coin Production and Banknote Paper Projects	Approval by the People's Bank of China (the "PBOC")	Deleted (Please see our analysis below)
9.	Projects with Investment from the Chinese Party of over USD1 Billion	Approval by CIA	Deleted (Please see our analysis below)
10.	Domestic Enterprises Establishing Enterprises Abroad (Excluding Financial Enterprises)	Projects involving sensitive countries and regions or sensitive industries shall be approved by the Ministry of Commerce (the "MOFCOM"). In other cases, investment made by enterprises under central management shall be filed with the MOFCOM and investment made by local enterprises shall be filed with provincial governments	Deleted.  The Circular further provides that the establishment of foreign-invested enterprises and overseas enterprises (excluding financial enterprises) shall be governed by competent commerce authorities in accordance with relevant law and regulations

In summary, the 2014 Catalogue implements filing management instead of governmental approval in industries facing serious overcapacity, such as steel, electrolytic aluminum, cement, plate glass and vessels, giving full play to the fundamental role of the market in resource allocation. However, the Circular also emphasizes that (i) investment in industries facing serious overcapacity shall still be strictly governed by the Guiding Opinions of the State Council on Resolving the Conflict of Rampant Overcapacity (Guo Fa [2013] No.41), (ii) local governments and departments shall not

accept the filing of any project generating additional production capacity in these industries in any other name or by any other means, and (iii) the relevant authorities and institutions shall not support the projects in industries facing serious overcapacity in any respect, such as land (sea) supply, energy conservation assessment, environmental impact assessment and new credit support etc., and shall work together to solve the serious overcapacity problem.

In addition, please also kindly note that:

- (1) Although banknote printing, coin production and banknote paper projects are no longer listed in the 2014 Catalogue, we cannot jump to the conclusion that the approval for the investment in aforementioned projects is no longer needed. According to the currently effective Administrative Regulations of the People's Republic of China on Renminbi promulgated by the State Council, RMB shall be printed by specialized printing enterprises designated by PBOC. Without the approval of PBOC, no entity or individual shall develop, model, import, sell, purchase or use any anti-counterfeiting materials/techniques/processes or any equipment for printing RMB.
- (2) According to the Administrative Measures for Approval and Filing of Overseas Investment Projects promulgated by NDRC, an overseas investment project with the Chinese party's investment amount of not less than USD1 billion is subject to approval by NDRC, which means the investment projects numbered with No. 9 in the above table shall still be approved by NDRC.
- (3) According to the Administrative Measures of Overseas Investment issued by MOFCOM, overseas investment involves sensitive countries and regions or sensitive industries is subject to approval, therefore the approval requirement for projects numbered with No. 10 in the above table has not changed.

### **Further Delegate the Approval Authority to Governments at Lower Level**

The authority for approving the following investment projects has been delegated to governments at lower level by the 2014 Catalogue:

No.	Investment Projects	2013 Catalogue	2014 Catalogue
1.	Pumped Storage Power Stations	Approval by Industry Administration Department under the State Council. (" <b>Approval by IAD</b> ")	Approval by Provincial Governments
2.	Hydropower Stations <sup>2</sup>	(1) <b>Approval by CIA:</b> projects	(1) <b>Approval by the State</b>

<sup>2</sup> As for hydropower stations, changes of 2014 Catalogue not only lies in power delegation, but also recovery of approval powers in some projects.

No.	Investment Projects	2013 Catalogue	2014 Catalogue
		<p>constructed in major rivers</p> <p>(2) <b>Approval by Local Governments:</b> other projects</p>	<p><b>Council:</b> projects built on rivers crossing borders or two or more provinces (districts or municipalities) with a total installed capacity of no less than 3 million kW per station or involving migrating no less than 10,000 residents</p> <p>(2) <b>Approval by CIA:</b> projects built on rivers crossing borders or two or more provinces (districts or municipalities) with a total installed capacity of no less than 500,000 kW per station</p> <p>(3) <b>Approval by Local Governments:</b> other projects</p>
3.	Thermal Power Station	Distributed gas generator projects shall be approved by provincial governments with the rest of the projects to be approved by CIA	Approval by Provincial Governments (coal-fired thermal power projects shall be approved in accordance with the national construction plans developed based on total volume control)
4.	Thermal Power Stations Supplying Both Heat and Electricity	Coal-fueled back pressure thermal projects shall be approved by provincial governments with the rest of the coal-fueled thermal projects to be approved by CIA. The other thermal power stations shall be approved by local governments	Approval by Local Governments (extraction condensing coal-fired power projects shall be approved by provincial governments in accordance with the national construction plans developed based on total volume control)
5.	Reception and Transportation Facilities for Importation of Liquefied Petroleum Gas	Approval by IAD	(1) <b>Approval by IAD:</b> newly built projects (including off-site expansion projects) (newly-built projects with receiving and storage capacity of no less than 3 million tons shall also be filed

No.	Investment Projects	2013 Catalogue	2014 Catalogue
			with the State Council) (2) <b>Approval by Provincial Governments:</b> other projects
6.	Power Grid Projects	<p>(1) <b>Approval by CIA:</b> cross-border and cross-province (district, municipality) direct current projects of <math>\pm 400</math> KV or above, cross-border and cross-province (district, municipality) alternating current projects of 500 KV, 750 KV and 1,000 KV</p> <p>(2) <b>Approval by IAD:</b> non-cross-border and cross-province (district, municipality) direct current projects of <math>\pm 400</math> KV or above, non-cross-border and cross-province (district, municipality) alternating current projects of 750 KV and 1000 KV</p> <p>(3) <b>Approval by Local Governments:</b> other projects</p>	<p>(1) <b>Approval by CIA:</b> Direct current projects of <math>\pm 500</math> KV or above, and alternating current projects of 500 KV, 750 KV and 1,000 KV crossing two or more provinces (districts or municipalities) (direct current projects of <math>\pm 800</math> KV or above and alternating current projects of 1,000 KV shall also be filed with the State Council)</p> <p>(2) <b>Approval by Local Governments:</b> other projects (direct current projects of <math>\pm 800</math> KV or above and alternating current projects of 1,000 KV shall be approved in accordance with the national plans)</p>
7.	Newly Built Refinery Projects and Expansion of One-time Refinery Projects	Approval by CIA	Expansion projects listed in the national energy development plan and the petrochemical industry planning scheme approved by the State Council shall be approved by provincial governments, and the other projects shall be approved by CIA
8.	Highways, Railways, Bridges and Tunnels	(1) <b>Approval by CIA:</b> projects crossing borders or important gulfs or great rivers (navigation level of Grade 3 or	(1) <b>Approval by CIA</b> projects crossing borders or channels of 100,000 tons or above or great rivers (the navigation level of

No.	Investment Projects	2013 Catalogue	2014 Catalogue
		<p>above)</p> <p>(2) <b>Approval by Provincial Governments:</b> trunk line projects (not part of the State Expressway Network)</p> <p>(3) <b>Approval by Local Governments:</b> other projects</p>	<p>which is or planned to be of Grade 1 or above) (cross-border projects shall also be filed with the State Council)</p> <p>(2) <b>Approval by Provincial Governments:</b> projects that are part of the State Expressway Network</p> <p>(3) <b>At the Discretion of China Railway Corporation and be Filed with CIA:</b> other projects that are part of the State Railway Network</p> <p>(4) <b>Approval by Local Governments:</b> other projects</p>
9.	Specialized Wharfs for Containers	<p>(1) <b>Approval by CIA:</b> projects constructed along the coastline (including Nanjing and downstream of Yangtze River)</p> <p>(2) <b>Approval by Provincial Governments:</b> other projects</p>	<p>(1) <b>Approval by CIA:</b> projects constructed along the coastline (including Nanjing and downstream of Yangtze River) with annual throughput of 1 million standard containers or above</p> <p>(2) <b>Approval by Provincial Governments:</b> other projects</p>
10.	Inland River Navigation	<p>(1) <b>Approval by CIA:</b> building of navigation structure of 1,000 tons or above</p> <p>(2) <b>Approval by Local Governments:</b> other projects</p>	<p>(1) <b>Approval by CIA:</b> navigation and hydropower junction projects of 1,000 tons or above constructed on high-grade channels crossing two or more provinces (districts or municipalities)</p> <p>(2) <b>Approval by Local Governments:</b> other projects</p>
11.	Civil Aviation (general-purpose airport and civil and military airport)	<p>(1) <b>Approval by the State Council:</b> newly built airports</p> <p>(2) <b>Approval by CIA with Relevant Departments of</b></p>	<p>(1) <b>Approval by the State Council:</b> newly built transportation airports</p> <p>(2) <b>Approval by Provincial</b></p>

No.	Investment Projects	2013 Catalogue	2014 Catalogue
		<b>Military Forces:</b> expansion of airports for civil and military uses	<b>Governments:</b> newly built general-purpose airports and expansion of civil and military airports
12.	Newly Built Ethylene Projects	Approval by CIA	Approval by provincial governments in accordance with petrochemical industry planning scheme approved by the State Council.
13.	Newly Built PX Projects and Newly Built MDI Projects	Newly built PX projects shall be approved by CIA and newly built MDI projects shall be approved IAD	Approval by provincial governments in accordance with petrochemical industry planning scheme approved by the State Council.
14.	Civil Aviation and Aerospace	Projects involving manufacturing of civil aviation aircraft (including helicopters), manufacturing of civil satellites and construction of earth stations for civil remote sensing satellites shall be approved by CIA	(1) <b>Approval by CIA:</b> manufacturing of trunk airliners and regional airliners, 6t/9-seat or above general-purpose planes and 3t or above helicopters, manufacturing of civil satellites and construction of earth stations for civil remote sensing satellites (2) <b>Approval by Provincial Governments:</b> manufacturing of general-purpose planes with 6t/9-seat below, helicopters of less than 3 tons
15.	Foreign Investment Projects	(1) <b>Approval by CIA:</b> projects under the encouraged category in the <i>Catalogue for the Guidance of Foreign Investment Industries</i> (the “ <b>Guidance Catalogue</b> ”) with total investment (including capital increase) of USD300 million or above which are	(1) <b>Approval by CIA:</b> projects under the encouraged category in the Guidance Catalogue with total investment (including capital increase) of USD1 billion or above which are required to be controlled (including relative control) by the Chinese party and projects under the

No.	Investment Projects	2013 Catalogue	2014 Catalogue
		<p>required to be controlled (including relative control) by the Chinese party and projects under the restricted category (excluding real estate) with total investment (including capital increase) of USD50 million or above</p> <p>(2) <b>Approval by Provincial Governments:</b> real estate projects and other projects under the restricted category in the Guidance Catalogue with total investment (including capital increase) of less than USD50 million</p> <p>(3) <b>Approval by Local Governments:</b> projects under the encouraged category in the Guidance Catalogue with total investment (including capital increase) of less than USD300 million which are required to be controlled (including relative control) by the Chinese party</p>	<p>restricted category (excluding real estate) with total investment (including capital increase) of USD100 million or above (projects with total investment (including capital increase) of USD2 billion or above shall also be filed with the State Council)</p> <p>(2) <b>Approval by Provincial Governments:</b> real estate projects and other projects under the restricted category in the Guidance Catalogue with total investment (including capital increase) of less than USD100 million</p> <p>(3) <b>Approval by Local Governments:</b> projects under the encouraged category in the Guidance Catalogue with total investment (including capital increase) of less than USD1 billion which are required to be controlled (including relative control) by the Chinese party</p>

It's also worth pointing out that although the authority for approving certain projects has been delegated to provincial or local governments, the grant of approval for such projects by provincial or local governments shall still be in compliance with the national plans. Therefore, the PRC government's control over corporate investment activities has not been substantially loosened. For example, concurrently with delegating the authority for approving investment of thermal and other power stations to provincial or local governments, the 2014 Catalogue requires provincial or local governments to approve such projects according to the national construction plan developed by the central government based on total volume control. The 2014 Catalogue essentially straightens up the relationship between the national regulations and local implementation, i.e. the central government is in charge of planning and the local governments are in charge of granting approvals

to specific projects according to the national plans. Compared with the previous approval system, the 2014 Catalogue only adjusts the governmental authority's level for approving the investment projects, rather than loosening volume control as a whole.

### **Further Improve the Regulatory System**

The Circular also requires that (i) the relevant approval authorities shall improve and optimize administrative measures, earnestly enhance administration efficiency, conscientiously perform approval responsibilities and review projects in strict compliance with the prescribed authority, procedures, time limits and other requirements, (ii) regulatory priorities shall be delegated to lower levels together with the delegation of approval and registration authority, and (iii) relevant governmental authorities shall closely cooperate with each other, improve the administrative techniques according to their respective duties and strengthen the supervision over investment activities. In addition, NDRC indicated in the press conference on November 18, 2014 that it would accelerate the construction of the online approval-supervision platform, and establish follow-up information sharing mechanism and multi-agency and co-ordination mechanism.

In conclusion, the implementation of the 2014 Catalogue is an important step taken by the PRC government to streamline administration and delegate power, plays an important part in the progress of delegating approval authority structurally and simplifying investment procedures, and is expected to help create a better investment environment.

We will continuously follow up with relevant laws and regulations and share with you timely.

## **2. China Allows Foreign Investors to Establish For-Profit Elderly Care Institutions (Authors: Huan WANG, Jiao MA)**

On November 24, 2014, the Ministry of Commerce and the Ministry of Civil Affairs issued an announcement (2014 No. 81) permitting foreign investors to establish for-profit elderly care institutions in China to provide care for the elderly (the "Announcement"). The stated purpose of the Announcement was to promote the development of elderly care services in China and to liberalize the social services industry generally. The Announcement further implements the Decision of the Chinese Central Committee on Several Major Issues With Respect to Comprehensively Deepening Reforms and the Several Opinions of the State Council on Expediting the Development of the Elderly Services Industry (Guo Fa [2013] No. 35).

### **The Announcement Encourages Foreign Investors to Establish For-Profit Elderly Care Institutions**

The Announcement encourages foreign investors to establish for-profit elderly care institutions.

Foreign investors may invest independently by themselves, or they may do so through a joint venture or cooperation with Chinese companies, enterprises, or other economic organizations.

### **Approval Process for Foreign-Invested For-Profit Elderly Care Institutions**

The authority responsible for approving foreign-invested for-profit elderly care institutions is the competent department of commerce at the provincial level.

#### **Step 1: The Approval Certificate for a Foreign-invested Enterprise**

According to the Announcement, a foreign investor intending to establish a for-profit elderly care institution is required to submit application materials to the competent department of commerce at the provincial level where the institution is proposed to be located. The competent department of commerce at the provincial level has 20 days upon its acceptance of the application to approve or disapprove the application in writing. Where the application is approved, the foreign investor is given the Approval Certificate for a Foreign-invested Enterprise with the words “operating based on the Permit for the Establishment of Elderly Care Institutions” added to its business scope.

#### **Step 2: Industrial and Commercial Registration**

After receiving the Approved Certified for a Foreign-invested Enterprise, the foreign investor has 1 month to complete the industrial and commercial registration for foreign-invested enterprises.

#### **Step 3: Permit for the Establishment of Elderly Care Institutions**

After completing the industrial and commercial registration, the foreign-invested enterprise is required to apply for and obtain the Permit for the Establishment of Elderly Care Institutions in accordance with the Permitted Measures In Relation to the Establishment of Elderly Care Institutions. No foreign-invested for-profit elderly care institution or foreign investor can provide elderly care service, charge fees, or admit elders in any name prior to the issuance of this permit and obtaining approval for registration in accordance with the law.

### **Rights Given to Foreign-Invested For-Profit Elderly Care Institutions**

The Announcement permits foreign-invested for-profit elderly care institutions to make domestic investments related to elderly care services.

The Announcement encourages foreign investors to develop elderly care institutions on a large scale, manage in the supply chain, and develop quality elderly care institutional brands. Foreign-invested for-profit elderly care institutions will enjoy the same preferential tax policies, preferential policies, and administrative and institutional fee reductions and exemptions as their domestic peers.<sup>3</sup>

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<sup>3</sup> According to the *Circular on Issues Concerning Reducing and Exempting Administrative and Institutional Fees for Elderly Care Institutions*

## **Restrictions on Foreign-Invested For-Profit Elderly Care Institutions**

In order to prevent abusing elderly care resources, the Announcement states that applications by foreign-invested real estate enterprises that change zoning, land use, volumes, or plot ratios for land designated for the construction of elderly care facilities will not be approved. Foreign-invested for-profit elderly care institutions also may not engage in businesses relating to residential discounting for the elderly. In addition, to prevent elderly care institutions from providing extra medical and health services, the Announcement states that where the business scope of a foreign-invested for-profit elderly care institution includes medical and health services, such foreign-invested institution shall first complete approval formalities in accordance with relevant policies and provisions.

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*and Medical Institutions* (Cai Shui [2014] No. 77), the competent authorities will reduce the administrative and institutional fees relating to for-profit elderly care institutions and medical institutions by half.

## **Important Announcement**

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