

Summary on the Circulars of MOFCOM and MOST on Matters Concerning the Examination and Approval of Foreign-Invested Venture Capital Investment Enterprises and Foreign-Invested Venture Capital Investment Management Enterprises

On 5 March 2009, the Ministry of Commerce of the People's Republic of China (the "**MOFCOM**") issued the *Circular of MOFCOM on Matters Concerning the Examination and Approval of Foreign-Invested Venture Capital Investment Enterprises and Foreign-Invested Venture Capital Investment Management Enterprises*. Thereafter, on 30 March 2009, the Ministry of Science and Technology of the People's Republic of China (the "**MOST**") issued the *Circular of MOST on Matters Concerning the Examination and Approval of Foreign-Invested Venture Capital Investment Enterprises and Foreign-Invested Venture Capital Investment Management Enterprises* (together with the aforementioned Circular issued by the MOFCOM, hereinafter collectively as the "**Circulars**"). The Circulars regulate and clarify the relevant matters regarding the transferring of power on examination and approval of the establishment of the foreign-invested venture capital investment enterprises and the foreign-invested venture capital investment management enterprises (hereinafter collectively, the "**FIVCIEs**") and the follow-up modification and administration thereon to the lower levels.

1、 Original Regulations

On 30 January 2003, the Ministry of Foreign Trade and Economic Cooperation (i.e. the former MOFCOM), the MOST, the State Administration for Industry and Commerce, the State Administration of Taxation, and the State Administration of Foreign Exchange jointly promulgated the *Provisions on Administration of Foreign-Invested Venture Capital Investment Enterprises* (the "**Original Regulations**") to regulate the examination and approval of the establishment of the FIVCIEs and the follow-up modification and administration thereon.

2、 Circulars

Compared with the Original Regulations, the Circulars mainly make the following changes:

(1) Transferring of examination and approval power to lower levels

Pursuant to the Original Regulations, the establishments of the FIVCIEs must be examined and approved by the MOFCOM, with the prior consent of the MOST.

Pursuant to the Circulars, the MOFCOM has empowered the selected Sub-National authorities to approve the establishment and the follow-up modification of the FIVCIEs with total investment amount of US\$100 million or less. The Sub-National governments granted this new power include the commerce departments of provinces, autonomous regions, municipalities directly under the Central Government, cities under separate planning, Harbin, Changchun, Shenyang, Jinan, Nanjing, Hangzhou, Guangzhou, Wuhan, Chengdu, Xi'an and Xinjiang Production and

Construction Corps, and all national economic and technological development zones (hereinafter collectively, the "**Sub-National Authorities**"). Furthermore, as to the application for the establishment of such FIVCIEs, the Sub-National Authorities shall solicit opinions in written form from the science & technology authorities at the same level.

(2) Clarify the key points of the establishment of the FIVCIEs examined by the MOST and its authorized departments

The Original Regulations did not explicitly regulate the key points and procedure for discussion between the MOFCOM and the MOST regarding the examination and approval of establishment of the FIVCIEs.

According to the Circulars, the MOST and its authorized departments shall, after receiving the letters and application materials from the competent commercial departments, focus on such contents as the investment direction, main fields, investment objects, investment periods and experience of the management team on investment in the field of science and technology, and etc. The specific format and procedures to reply their views shall be determined through the consultation between the commercial departments and the science & technology departments. In addition, the science & technology departments shall provide the written feedback to the commercial departments within five (5) days after receiving such letters from the commercial departments.

(3) Shorten the time limit for examination and approval

Pursuant to the Original Regulations, MOFCOM shall, within forty-five (45) days after receiving the application materials and with the prior consent of the MOST, made a decision for approval or disapproval in written form.

Pursuant to the Circulars, the Sub-National Authorities shall, within thirty (30) days after receiving the application materials and with the prior consent of the science & technology departments at the same level, made a decision for approval or disapproval in written form. Among which, the science & technology departments shall provide the written feedback review to the commercial departments within five (5) days.

(4) Alter the reporting and filing authorities.

Pursuant to the Original Regulations, each of the FIVCIEs shall submit its annual report regarding the fund raising and usage conditions in the previous year to the MOFCOM in March of each year. Pursuant to the Circulars, each of the FIVCIEs shall submit the *FIVCIEs Reporting Form* regarding the fund raising and usage conditions in the previous year to the Sub-National Authorities in March of each year.

(5) Transfer the power on examination and approval of the follow-up modification matters to the Sub-National Authorities

Pursuant to the Original Regulations, the FIVCIEs shall apply to the original registration authorities for the modification registration and follow-up matters.

Pursuant to the Circulars, the FIVCIEs, the establishments of which have already been approved by the MOFCOM, shall apply to the Sub-National Authorities for the modification registration and follow-up matters, provided that, the FIVCIEs with increased capital more than US\$100 million in one lump or changes of requisite investors will be still subject to the approval and administration of the authority of MOFCOM.

The above is the brief introduction regarding the *Circular of MOFCOM on Matters Concerning the Examination and Approval of Foreign-Invested Venture Capital Investment Enterprises and Foreign-Invested Venture Capital Investment Management Enterprises* and the *Circular of MOST on Matters Concerning the Examination and Approval of Foreign-Invested Venture Capital Investment Enterprises and Foreign-Invested Venture Capital Investment Management Enterprises*, which are solely for the reference purpose. Should you have any questions or need further clarification, please feel free to contact us.

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