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MOFCOM Further Strengthens Management of Foreign-invested Financing Leasing Companies

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To clarify specific requirements of approving foreign-invested finance leasing companies (“FIFLCs”), the Ministry of Commerce issued the *Notice on Strengthening and Improving the Approval and Management of Foreign-invested Financing Leasing Companies* (the “**Notice**”) on July 18, 2013. The attachment to the Notice, the *Approval Guidelines for Access of Foreign-Invested Financing Leasing Companies* (the “**Guidelines**”), further defines the access requirements of FIFLCs specified in the *Measures for the Administration of the Foreign-Invested Lease Industry* (Order of the Ministry of Commerce [2005] No. 5). The main contents of the Guidelines are as follows:

1. Investor Qualifications

The Guidelines provide that investors of FIFLCs shall meet the following requirements:

- a. Investors shall be companies, enterprises or other economic organizations. Foreign investors or their overseas parent companies shall be engaged in substantive business operations, and shall have good credit;
- b. Investors shall have existed for at least one year. Where qualified overseas parent companies establish FIFLCs through their wholly owned overseas subsidiaries (“SPVs”), the 1-year existence requirement may not be applicable to such SPVs;
- c. the total assets of foreign investors shall not be less than \$5,000,000;
- d. The audit report of the investors for the recent year, which shall be submitted to the relevant commerce departments, shall not display insolvency.

2. Professional Personnel Qualifications

The Measures for the Administration of the Foreign-Invested Lease Industry provide that

FIFLCs shall have personnel with relevant expertise, and the senior managers shall have the corresponding professional qualifications and not less than three years' working experience in the relevant industry. In practice, there was a lack of clear guidelines for defining the requirements related to professional qualifications and working experience. The Guidelines specify such requirements as follows:

- a. "Professional" refers to the personnel with professional knowledge, skills and experience on finance, trade, law, accounting, engineering and technical management and other related areas, which is required for the performance of his/her duty. Such personnel shall also have sound working records.
- b. "Senior Manager" refers to the general manager and deputy general manager, business executive, financial executive, risk control executive and operations executive.
- c. "With the corresponding professional qualifications" means the expertise in the business areas that the personnel take charge of and the relevant practicing certificates issued by the administrative departments or authoritative organizations of the industry. The personnel in principle shall also have a bachelor's degree level of education or above.
- d. "Not less than three years' experience in the industry" means more than three years' managerial experience in FIFLCs or related financial institutions.

3. Application Materials Required for Establishment of FIFLCs

Based on the Guidelines, in respect of the application materials, investors intending to establish FIFLCs are suggested to pay attention to the following requirements:

- a. The feasibility study report shall cover the to-be-established company's prospective business development plan, business industries and areas to engage in, organizational structure, cost-benefit analysis and risk control capability analysis and other related matters;
- b. The same investor or its parent company, which has established two or more FIFLCs, shall provide the audit report, capital verification report (the registered capital shall have been paid on time) and business description of the established FIFLCs. There shall be significant differences in the business areas between the newly established company and the existing company;
- c. The administrative departments in charge of examination and approval will require the foreign investors to truthfully disclose the actual investors' background information, and will rigorously review the status of their overseas assets.

4. Business Scope of FIFLCs

As stipulated in the Notice, FIFLCs shall not: 1) engage in deposits, loans, entrusted loans and other related activities, 2) without the approval of relevant administrative departments, engage in interbank lending, equity investments and other related businesses, and 3) provide direct or indirect financing for local government financing vehicles undertaking public welfare projects in any form.

In addition, the Guidelines specify that FIFLCs may engage in guarantee business associated with leasing transactions, but such guarantee business shall not be the main business, and the names of the FIFLCs shall not include the word “guarantee”.

5. Other Requirements

In addition to the above provisions, the Guidelines restate and emphasize certain substantive requirements for FIFLCs, i.e.:

- a. the term of FIFLCs shall in principle not exceed 30 years;
- b. the registered capital shall not be less than \$10 million;
- c. the proportion of foreign investments shall not be less than 25%; and
- d. the name and the business scope shall not contain “financial leasing(金融租赁)”.

Important Announcement

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