CLIFFORD CHANCE

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Shanghai further delegates examination and approval authority for foreign-invested projects

With a view to promote direct foreign investment and in line with the policy of the National Development and Reform Commission (NDRC), the Shanghai government has issued an opinion in April to further delegate its verification and approval authority downward. The Opinion is good news to foreign investors as certain projects in which they invest within Shanghai may now be verified and approved by relevant district or county level authorities or specific organisations rather than the Shanghai central authorities. This implies that the verification and approval process for foreign-invested projects in Shanghai is now likely to be expedited and less cumbersome.

Key Issues

NDRC Circular 2010

The NDRC and its local counterparts (DRCs) together with the PRC Ministry of Commerce (MOFCOM) and its local counterparts are the two principal regulatory authorities that oversee foreign investment into China.

In 2010, the NDRC issued a circular[1] delegating its authority to its provincial DRCs to verify and approve projects with a total investment of less than US$300 million which fell within the "encouraged" or "permitted" categories of the Catalogue for the Guidance of Foreign Investment Industries (Catalogue). Another positive step towards the localisation of the verification and approval authority was taken on 26 April 2011, with the Shanghai DRC releasing the Several Opinions on Further Decentralizing the Examination and Approval Authority for Foreign-invested Projects (DRC Opinion).

The Shanghai DRC Opinion and its impact

The *DRC Opinion* further delegates the verification and approval authority held by the Shanghai municipal DRC to Shanghai district and county level DRCs. These local-level authorities now have considerably greater autonomy to verify and approve foreign investment located within their regions. Verification and approvals which relate to "restricted" industries, as well as projects subject to "overall balancing" in Shanghai[2], however, must continue to be issued by the Shanghai municipal DRC.

The key effects of the DRC Opinion can be summarised as follows:

- the total investment threshold for projects within the "encouraged" and "permitted" categories of the Catalogue that may be verified and approved by certain organisations recognised by the Shanghai Municipal People's Government[3] has increased from US$100 million to US$300 million.

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- the Pudong New Area DRC may verify and approve projects with a total investment of under US$300 million that fall within the "encouraged" or "permitted" categories of the Catalogue, as if the Pudong New Area DRC had the same power as that of the Shanghai municipal DRC.
- DRCs in Shanghai's central city districts may verify and approve service industry projects with a total investment of under US$300 million that fall within the "encouraged" or "permitted" categories of the Catalogue. They may also verify and approve other "encouraged" and "permitted" projects with a total investment of under US$100 million.
- DRCs of Shanghai's rural districts (counties) may verify and approve industrial projects with a total investment of under US$300 million that fall within the "encouraged" and "permitted" categories of the Catalogue. They may also verify and approve other "encouraged" and "permitted" projects with a total investment of under US$100 million.
- notably however, any residential real estate developments with a total investment of over US$100 million must continue to be verified and approved by the Shanghai municipal DRC rather than the local DRCs.

Current practices

Since the *DRC Opinion* was issued, foreign-invested projects in Shanghai have primarily been verified and approved by district or county level DRCs and organisations recognised by the municipal government. This has, undoubtedly, expedited the verification and approval process within Shanghai. It is also notable that the *DRC Opinion* delivers a clear message about the priorities of the Shanghai government in attracting foreign investments and developing strategic industries: new emerging industries, advanced manufacturing and modern service industries will be encouraged, while developments in the real estate sector will be restricted.

The Shanghai municipal DRC has stated that local authorities should obtain relevant government verification and approval in strict accordance with law. Where the municipal DRC receives evidence of irregular practices, it is likely to suspend or withdraw its delegated authority. Foreign investors planning to invest in Shanghai must therefore pay attention when making such applications to ensure that the authorities they contact are duly authorised to attend to the verification and approval procedures.

[1] *NDRC Circular on Delegating Approval Authority for Foreign-invested Projects,* issued on 4 May 2010.

[2] Projects designated as requiring "*overall balancing*" such as those relating to agriculture and forestry irrigation, energy, traffic and transportation, municipal and rural construction and social work are governed by the *Detailed Rules for the Catalogue of Investment Projects Approved by the Shanghai Municipal People's Government.*

[3] Organisations recognised by the Shanghai Municipal People's Government include the administrative committees of, among others, 1) The Shanghai Free Trade Zones; 2) Shanghai Zhangjiang Hi-Tech Park; 3) Shanghai Chemical Industry Park; 4) Shanghai Lingang Industrial Park; 5) Changxing Island Development and Construction Zone; 6) Shanghai Hongqiao Central Business District, and 7) Export Processing Zones in Shanghai approved by the State Council.