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The Guiding Opinions on the National Absorption of Foreign Investment 2008 Issued by the Ministry of Commerce

By David Yu and Tomy Xia

On 6 February 2008, the Ministry of Commerce of the People's Republic of China issued ***the Guiding Opinions on the National Absorption of Foreign Investment 2008*** *(No.7 2008)* ("Guiding Opinions"), which made a brief summary on the national absorption of foreign investment in 2007 and provided the guidance for foreign investment in China in 2008. The Guiding Opinions of Ministry of Commerce emphasizes on the followings primarily:

Transform of the Approaches to Foreign Investment Absorption

The Guiding Opinions highlights that the absorption of foreign investment should be further dedicated to the energy saving, emission reduction, economical and intensive utilization of land, independent innovation and performance of social responsibility, and guides the foreign investors to invest pursuant to the concept of scientific development. The Guiding Opinions makes more emphasis on balancing the relationship between the environment protection, intensive resource utilization, industrial upgrading and social harmony, and absorption of foreign investment in the developed eastern region of China. For instance, with respect to the environment protection, the State Council undertook the institutional reform in March 2008, which upgraded the former State Environmental Protection Administration to the Ministry of Environmental Protection under the direct control of the State Council. Meanwhile, the National Development and Reform Commission, together with the Ministry of Finance, made a joint approval of the first self-construction plan in the history of China's environment protection. The plan is named the *11th Five-Year Plan for the Establishment of National Environment Regulatory Capacity* with the total investment of RMB 14.959 billion, of which RMB 7.847 billion comes from the Central Government, and arranges 50 key environment projects. This indicates the development of China's environment regulatory system towards modernization, standardization and informatization.

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Latest Orientation for Guiding the Foreign Investment

On 31 October 2007, the National Development and Reform Commission and the Ministry of Commerce jointly published the *Catalogue of Industries for Guiding Foreign Investment (Revised in 2007)* (No.57) in order to provide the foreign investors with the new guidance on investment in the China's industry. This Guiding Opinions further emphasizes on the implementation the *Catalogue of Industries for Guiding Foreign Investment (Revised in 2007)* and encouragement of foreign investment in equipment manufacturing, new materials manufacturing and other high-tech industries. Meanwhile, the Guiding Opinions enhances the administration on the foreign investment in the areas, such as steel, cement, electrolytic aluminum and real estate, and restrict the high energy consumption and emission industries from being transferred to China at the background of active cooperation with the national macroeconomic readjustment and control. In 2007, China not only restricted the foreign investment, but also restricted the direct financing and indirect financing, in the controlled industries as stated above, while the Guiding Opinions further enhances such control over the controlled industries. For example, the Ministry of Commerce, the State Administration of Foreign Exchange and other departments issued a series of important regulations to regulate the foreign investment in the real estate industry and implemented the filing system of the Ministry of Commerce applicable to the foreign-invested real estate enterprises. Therefore, as evidenced by the Guiding Opinions and practice, China has not only imposed restrictions on the foreign-invested real estate enterprises, but the foreign investment in the entire real estate industry as well.

Innovate the Methods for Utilizing Foreign Investment and Expand the Channels for Utilizing Foreign Investment

The Guiding Opinions indicate that the Ministry of Commerce is committed to encouraging the foreign investors to set up venture investment enterprises, completing the exit mechanism of venture investment, and supporting the development and expansion of the domestic small and medium-sized high-tech enterprises in 2008. The published and implemented *Administration of Foreign-invested Venture Enterprises Provisions*, together with the *Regulations of IPO and Listing in the Second Board*, still subject to the enactment, provide the domestic small and medium-sized high-tech enterprises with the significant methods of listing in the domestic market. In the meantime, the Guiding Opinions declares to guide the qualified foreign-invested enterprises to list in China and establishes a crucial means for foreign investors to exit. All these regulations above are in line with the *11th Five-Year Plan of Utilizing Foreign Investment* promulgated by the National Development and Reform Commission in 2006

In addition, the Guiding Opinions encourages the foreign investors to participate in the corporate restructuring and transformation of state-owned enterprises through mergers and acquisitions, requires the administrative department of foreign investors to improve its cooperation with the relevant departments, and establishes the comprehensive supervisory and review systems for the mergers and acquisitions of foreign investors in order to maintain the security of the national industries.

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