

## E-ALERT | China Practice

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### CHINA RELEASES REVISED CATALOGUE FOR GUIDING FOREIGN INVESTMENT: EMPHASIS ON THE STRATEGIC EMERGING INDUSTRIES

On December 24, 2011, China's Ministry of Commerce and National Development and Reform Commission released the *Catalogue for Guiding Foreign Investment (2011 Revision)* ("Catalogue"), the nation's principal document for regulating foreign investment into China. As expected, the final Catalogue promotes investment in the strategic emerging industries identified in China's 12th Five-Year Plan ("12th FYP") and removes a number of investment barriers previously applicable to foreign investors. The catalogue will take effect January 30, 2012.

#### BACKGROUND TO THE 2011 REVISION

The new Catalogue replaces the *Catalogue for Guiding Foreign Investment (2007 Revision)* ("2007 Catalogue"). As with previous revisions, the Catalogue subdivides potential industries into encouraged, restricted, and prohibited spheres. Industries not listed in the Catalogue are considered permitted by default. While placement on the "encouraged" list does not confer any specific benefits, foreign investors operating in these industries may enjoy preferential terms and streamlined governmental approvals for their investments.

The 2011 revisions to the Catalogue follow the 2010 release of *Certain Opinions of the State Council on Further Facilitating the Utilization of Foreign Capital* ("Opinions") that called for redrafting the Catalogue to open more sectors of China's economy to foreign investment. The Opinions encouraged foreign investors to invest in high-end manufacturing industries, new and high technology industries, modern service industries, as well as new energy, energy efficient and environmental protection industries.

The investment areas targeted by the Opinions were further reflected with the passage of the 12th FYP by the National People's Congress in March 2011. China's five-year plans serve as the strategic blueprint for the nation's economic development and play a principal role in encouraging those industries seen as vital to China's national interest. The 12th FYP identifies seven "strategic emerging industries" for development over the next five years: energy conservation and environmental protection, new information technology, biology, high-end equipment manufacturing, new energy, new materials, and new energy vehicles. The revision of the Catalogue follows the promulgation of the 12th FYP and reflects many of its key ideas pertaining to these industries.

In March 2011, a draft revision of the Catalogue was released for comment. The final version of the Catalogue is largely unchanged from the March draft, although several modifications were made, most notably further additions to the "encouraged list" as well as the addition of "construction and operation of large scale agricultural product wholesale markets" to the "restricted" list.

Significant changes in the final 2011 version of the Catalogue from the 2007 version include the following:

## **ADDITIONS TO THE CATALOGUE’S LIST OF AREAS WHERE FOREIGN INVESTMENT IS ENCOURAGED**

Major additions to the Catalogue’s list of areas “encouraged” for foreign investment include:

- certain waste management services such as technology for offshore oil spills and wastewater treatment;
- manufacture of batteries and key components for new energy vehicles;
- motor vehicle charging stations;
- development and manufacturing of next generation Internet system equipment;
- venture capital business;
- intellectual property rights services; and
- vocational skills training.

In addition, while the manufacture of batteries and other key components for new energy automobiles has been added to the “encouraged” list, “manufacture of entire automobiles” has been dropped, signaling that China will not promote foreign investment in the sector so as to protect domestic production.

## **MODIFICATIONS TO THE CATALOGUE’S AREAS WHERE FOREIGN INVESTMENT IS RESTRICTED**

Foreign investment in “restricted” industries is subject to stricter government review and may limit foreign ownership to certain enterprise forms or to a minority stake. Industries which have been removed from the Catalogue’s list of areas where foreign investment is “restricted” include the following:

- commodity auctioneers;
- franchises;
- financial leasing company;
- production of carbonated beverages; and
- medical treatment establishments.

New additions to the Catalogue’s list of areas where foreign investment is “restricted” include the following:

- exploration and mining of certain precious nonmetals and phosphates;
- petroleum processing and coking, and nuclear fuel processing;
- production of chemical raw materials; and
- construction and operation of large scale agricultural product wholesale markets.

## MODIFICATIONS TO THE CATALOGUE'S AREAS WHERE FOREIGN INVESTMENT IS PROHIBITED

On January 19, 2010, the World Trade Organization (“WTO”) found that China had violated its WTO commitments through restrictions on the distribution and importation of publications and certain audiovisual materials. As a result, the newly revised Catalogue removes from the “prohibited” list the “distribution and import” of books, magazines, and newspapers, and the “import” of audio and video products and electronic publications. Publication of these materials is still restricted.

Industries newly prohibited to foreign investment include:

- domestic express shipping industries;
- villa construction; and
- research and development of certain genetically modified foods.

As the catalogue will govern both greenfield investment as well as indirect investment such as M&A or a company’s expansion of business scope, foreign investors in China should closely review the Catalogue to understand how future operations may be affected by the recent revisions.

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If you have any questions concerning the material discussed in this client alert, please contact the following members of our firm:

<b>Tim Stratford (Beijing)</b>	86.10.5910.0508	<a href="mailto:tstratford@cov.com">tstratford@cov.com</a>
<b>Eric Carlson (Beijing)</b>	86.10.5910.0503	<a href="mailto:ecarlson@cov.com">ecarlson@cov.com</a>
<b>Scott Livingston (Beijing)</b>	86.10.5910.0511	<a href="mailto:sdlivingston@cov.com">sdlivingston@cov.com</a>

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