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China's regulatory framework for outward foreign direct investment

Karl P. Sauvant  & Victor Zitian Chen

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Abstract

China has become the world's third largest outward investor, behind the United States and Japan. A growing body of literature suggests that China's regulatory framework for outward foreign direct investment (OFDI) is a determinant of the country's rising OFDI. This article presents a holistic review of that framework, including some possibilities for its improvement. Overall, China's framework serves two objectives: to help Chinese firms become more competitive internationally and to assist the country in its development effort. In pursuing these objectives, the regulatory framework has moved from restricting, to facilitating, to supporting, to encouraging OFDI, but there are still strong elements of administrative control that make it cumbersome. State-owned enterprises (SOEs) seem to benefit particularly from the current framework when internationalizing through FDI.

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Notes

1. Although the expression ‘go out’ policy is usually used as the official translation of 走出去 (see, e.g., Government of China [2006](#)), ‘going out’, ‘go abroad’, ‘going abroad’, ‘step out’, and ‘stepping out’ are sometimes used interchangeably in the literature.
2. ‘Nonfinancial’ refers to all Chinese investors that do not belong to the banking, securities, and insurance sectors. ‘Financial’ refers to Chinese investors in the banking, securities, and insurance sectors.

3. There were a total of 115 SASAC-listed central SOEs as of 12 May 2013. The full list is available at <http://www.sasac.gov.cn/n1180/n1226/n2425/index.html>
4. The laws and regulations concerning China's OFDI are available from various websites and are updated frequently. For a collection of a number of them, see Wolff ([2011](#)) and Bernasconi-Osterwalder, Johnson, and Zhang ([2012](#)).
5. A sample of the Certificate can be found at <http://tfs.mofcom.gov.cn/accessory/200903/1237250375949.doc>
6. A special purpose vehicle is a legal entity created by a sponsor or originator firm by transferring assets to the vehicle to carry out some specific and often temporary purposes or circumscribed activities or a series of such transactions.
7. For instance, building a manufacturing facility.
8. For example, deposits, preinvestment market research costs, preinvestment consulting, and legal service fees.
9. That is, the China Banking Regulatory Commission, the China Securities Regulatory Commission, and the China Insurance Regulatory Commission.
10. A detailed list of the policies and regulations of the China Banking Regulatory Commission can be found at <http://www.cbrc.gov.cn/chinese/zhengcefg.html>. A similar list for the China Securities Regulatory Commission can be found at <http://www.csrc.gov.cn/pub/zjhpublic/index.htm?channel=3300/3311> (both sites accessed on 16 January 2013).
11. For an example of the full list of the performance measures under review, see <http://hzs.mofcom.gov.cn/article/zcfb/b/200912/20091206705370.shtml>
12. Chinese forestry companies also need to comply with the rules of the State Forestry Administration ([2010](#)).
13. The Ministry of Foreign Affairs, the NDRC, the Ministry of Public Safety, the State Administration of Work Safety, and the All-China Federation of Industry and Commerce.
14. Namely the International Communications Office of the Communist Party of China's Central Committee, the Ministry of Foreign Affairs, the NDRC, the SASAC, the National

Bureau of Corruption Prevention, and the All-China Federation of Industry and Commerce.

15. That is, investment that makes a maximum contribution to the economic, social, and environmental development of the host country and that takes place within a framework of fair governance systems (e.g., when negotiating large-scale complex contracts with host countries).
16. For instance, up to 20% of the carrying costs can be covered through subsidies for a Chinese natural resource-seeking investor to transport natural resources back to China (Luo, Xue, and Han [2010](#), 76).
17. The Catalogue has three parts, which can be downloaded through the following links: www.china.com.cn/chinese/PI-c/626171.htm (Part 1); www.sndrc.gov.cn/view.jsp?ID=9674 (Part 2); and <http://www.sdpc.gov.cn/zcfb/zcfbtz/2007tongzhi/W020070227622797287359.doc> (Part 3).
18. The system is available online at <http://femhzs.mofcom.gov.cn/fecpmvc/pages/fem/LoggedInHome.html>
19. Further information about surveys by the China Council for the Promotion of International Trade is available at http://www.ccpit.org/zhuanti/zouchuqu/Channel_1085.htm?ChannelID=1085
20. The date of the latest update of UNCTAD's BIT list.
21. The Agreement Among the Government of Japan, the Government of the Republic of Korea, and the Government of the People's Republic of China for the Promotion, Facilitation and Protection of Investment can be accessed at http://www.mofa.go.jp/announce/announce/2012/5/pdfs/0513_01_01.pdf
22. Consisting of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates.
23. The report was published in 2012.
24. The 2005 survey did not have the category of 'important', but only 'very important' on a seven point scale. For the purpose of this article, 'important' was defined as the rankings that indicated a '5' and '6' out of '7' on the scale.

25. Together with the MOFCOM, the Ministry of Foreign Affairs, the Peoples' Bank of China, and eight other ministries.
26. Based on 2012 data, China was only behind the United States (with foreign direct investment flows of US\$329 billion) and Japan (US\$123 billion).
27. This high concentration of OFDI in terms of the number of MNEs is typical for many home countries.
28. For a discussion of the range of issues surrounding FDI by state-controlled entities, see Sauvant, Sachs, and Schmit Jongbloed ([2012](#)).

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