Understanding China's Overseas Investments Governance and Analysis of Environmental & Social Policies

Series of China's "Going Global"

Global Environmental Institute
Investment Trade and the Environment Program Team

Global
Envirionmental Institute

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About GEI

The Global Environmental Institute (GEI) is a leading Chinese non–governmental organization (NGO) established in Beijing in 2004. GEI's mission is to design and implement market–based models to solve environmental problems and realize sustainable development in China and overseas. GEI provides policy suggestions to governments and promotes best environmental practices on investment, trade, energy and climate change, biodiversity protection and capacity building. Since its establishment, GEI has been engaging in research and demonstration projects in more than 20 provinces, cities and municipalities in China as well as in Southeast Asian and African countries.

Through its Investment, Trade and Environment project, GEI is dedicated to encouraging and supporting the Chinese government to formulate foreign investment and trade related environmental policies that regulate and guide the environmental conduct of enterprises investing overseas; build up the environmental governance capacity of host countries, including the development of appropriate environmental policies that regulate environmental conduct of investors; and improve the capability of Chinese enterprises to comply with environmental policies and regulations, better manage investment risks and fulfill their environmental and social responsibilities.

GEI has successively pushed forward and participated in the development of *A Guide on Sustainable Overseas Silviculture by Chinese Enterprises* and *A Guide on Sustainable Overseas Forest Management and Utilization by Chinese Enterprises* issued by the State Forestry Administration and the Ministry of Commerce (MOC) in 2007 and 2009 respectively, as well as the *Guidelines for Environmental Protection in Foreign Investment and Cooperation* released by MOC and the Ministry of Environmental Protection in 2013. GEI has also carried out demonstration projects, conducted research and led local capacity building activities on sustainable investment in Laos, Myanmar, Mozambique, Congo (DRC) and other Southeast Asian and African countries.

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Preface

Economic globalization, characterized and driven by liberalization of trade and investment, integration of financial markets and regional economies, as well as advancement of transportation and telecommunications, not only provides private sectors with widening access to global resources, overseas markets and mature knowledge and technologies, but also creates unprecedented opportunities for economic development and livelihoods improvement for individual countries. Parallel to the expansion of investment, production and trade activities have been the increasing environmental degradation such as depletion of natural resources, biodiversity loss and climate change caused by unsustainable production and consumption practices, which raises criticism and prompts rethinks among the international community on traditional development models. The principle of sustainable development was proposed in this context; related concepts, technologies and mechanisms, including corporate social responsibility (CSR), low carbon development and the adopting of clean energy have since been developed and promoted worldwide.

In China, the introduction and implementation of the"opening up and reform"policy since the late 1970s has allowed the country to achieve sustained high levels of economic growth. The first two decades were very much characterized by "bringing in" foreign investment, technology, managerial expertise and demographic dividend that has helped shape China into an export-oriented economic powerhouse, forming the basis of China's economic takeoff. In comparison, the articulation of the "Going Global" Strategy in China's "National Tenth Five-year Plan (FYP)" together with China's accession into the WTO in 2001, signaled China's intent to take full advantage of economic globalization as a launch pad to elevate the country to a higher level of international competiveness, by promoting Chinese enterprises taking a more proactive role in international economic cooperation and competition, and expanding business operations overseas. Fourteen years after its implementation, the "Going Global" Strategy has already propelled China into the top league of international investment. China's Outward Foreign Direct Investment (OFDI) totaled US$116 billion in 2014 alone, 43 times the volume in 2001, covering 184 countries and regions. An increasing number of Chinese enterprises have begun to learn about investment environments of host countries, including economic, political and the societal factors. These are embedded into the international economic structure and are also a part of the forces that shape its development.

The next five to ten years will witness a new wave of Chinese OFDI following the establishment of the Asian Infrastructure Investment Bank (AIIB), the Silk Road Fund and the proposal of the "One Belt One Road" Initiative. Within these strategic investment priority areas there are a lot of developing countries and least developed countries (LDC) that have abundant natural resources but lack sound institutional frameworks in place. Environmental and social policies, standards and practices that Chinese investors adopt in these countries will therefore have large impacts on local environment and livelihoods. If Chinese enterprises can fully embed principals of sustainability in their overseas investment activities, it will not only shift the economies of both China and the host countries towards a more green development path, but also serve as a flagship example of how emerging market investments can catalyze sustainable growth.

As a Chinese environmental non-governmental organization (NGO), the Global Environmental Institute (GEI) has endeavored to facilitate environmentally, socially and economically viable Chinese overseas investment and trade. GEI promotes the Chinese government to issue policies and regulations guiding the environmental behaviors of Chinese enterprises overseas, enhance the environmental governance capacities of host country governments, and provide recommendations to Chinese enterprises on environmental and social related works through research and on-site pilot projects. During the past ten years of policy advocacy, GEI has initiated and participated in the drafting of several milestone policy documents, including *A Guide on Sustainable Overseas Silviculture by Chinese Enterprises and the Environmental Protection Guidelines for Overseas Investment and Cooperation*.

Our long-term observations indicate that China's National Development and Reform Commission (NDRC), Ministry of Commerce (MOFCOM) as well as other ministries, have released dozens of policies to regulate, manage and guide the overseas investment activities of Chinese enterprises. With such policies gradually put in place, overseas investment monitoring systems have been established through simplifying approval and recording procedures, optimizing finance and tax incentive policies, and providing information support. In recent years there has also been increasing articulation and guidance relating to the environmental and social behaviors of enterprises overseas, as demonstrated in the National 12th FYP, *Measures for Overseas Investment Management*, among others.

In 2014-15, GEI's Investment, Trade and Investment team conducted a thorough review on China's overseas investment management framework, with an aim to propose recommendations to improve policy effectiveness through understanding its evolving path, analyzing challenges and obstacles, as well as learning from related best practices. We present this report summarizing the major research findings, as the first report of GEI's publication series of China's "Going Global", for our friends and colleagues who are also interested in this topic.

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Understanding China's OFDI Governance Structure and Supporting Policies

With the development of its "going global" strategy, China is gradually establishing its OFDI related governance structure and management systems to guide and supervise Chinese enterprises investing abroad. This includes assigning designated administration departments, setting up and improving arrangements on approval, annual inspection, statistics collection, safety risk prevention and control, and initiating a record for bad credit in overseas investment activities. Efforts have also been made in recent years, to simplify approval and record procedures, optimize finance and tax incentive policies, as well as provide information support, to expedite easier outbound investment for China's domestic enterprises.

This section provides a general understanding of governance structure, management systems and related policies of China's OFDI. It provides information on the main departments in-charge, the approval procedures of investment projects, the requirements on annual inspection, data collection, and safety risk prevention and control for enterprises. It also explains the bad credit records, the nature of management towards central state-owned enterprises[①](SOEs), and outlines some of the incentive policies for enterprises to invest abroad, together with t information services the government provides.

① Central SOEs refers to state-owned enterprises under the supervision of the Central Government (excluding financial enterprises).

1.1 Main Responsible Government Departments and Supporting Organizations

The Ministry of Commerce (MOFCOM) and the National Development and Reform Commission (NDRC) and are the main government departments in charge of China' s overseas investments.

MOFCOM, especially the Department of Outward Investment and Economic Cooperation (hereinafter DOIEC), is responsible for developing management strategies and specific policies on Chinese enterprises' overseas investment, approving and monitoring firms (excluding financial services) that are engaged in outward investment in accordance with laws and regulations, and working with other departments to provide recommendations on related finance, insurance, foreign exchange, entry and exit policies. MOFCOM is also responsible for undertaking multilateral and bilateral exchanges and cooperation on overseas investment, negotiating and implementing intergovernmental cooperation projects, and guiding the implementation of key projects. It also works with other departments to safeguard outward investment and economic cooperation and tackle emergencies.

NDRC is responsible for approving and filing major natural resource development projects and large investment projects overseas. It is also responsible for developing overseas investment strategies, drafting related administrative rules and regulations and planning the use of foreign exchange in overseas investment.

Policies associated with overseas investment credit, taxation and foreign exchange management are developed and issued by relevant government departments or agencies independently or in collaboration with MOFCOM and NDRC. These departments and agencies include the Ministry of Foreign Affairs (MFA), State Administration of Foreign Exchange (SAFE), State Administration of Taxation (SAT), China Development Bank (CDB) and China Export & Credit Insurance Corporation (SINOSURE).

The Export–Import Bank of China (China ExIm Bank) andCDB provide overseas investment loans to support Chinese enterprises to "Go Global" . The Economic and Commercial Counselor's Offices of Chinese embassies actively support the implementation of the Going Global Strategy by providing consulting services to Chinese enterprises investing in different countries, facilitating bilateral investment matchmaking, and helping resolve investment disputes involving Chinese enterprises.

As the investor for China's central SOEs, the State–owned Assets Supervision and Administration Commission of the State Council (SASAC) is responsible for formulating regulations to supervise and administrate the overseas state–owned assets of central SOEs sand supervises the implementation of such regulations. When investing overseas, central SOEs are subject to NDRC and MOFCOM supervision and must comply with related regulations formulated by SASAC. Central SOEs have to include overseas investment plans in their annual investment budget and file the plans with SASAC, and get approval from SASAC if the investment is beyond their primary business scope.

1. 2 Approval and Filing Requirements for Investing Overseas

Approval and Filing Requirements for Investing in Non-financial Enterprises Overseas

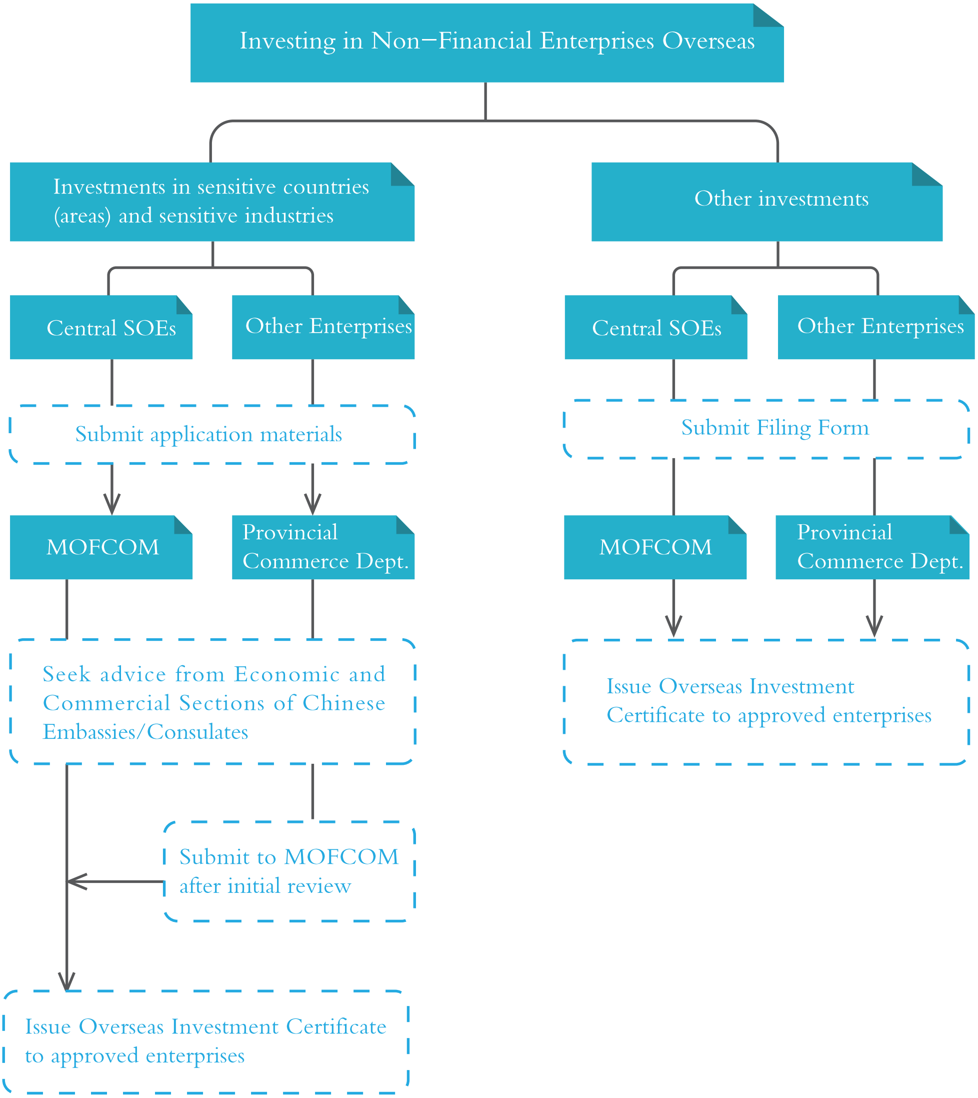
According to the *Measures for Overseas Investment Management* ② released by MOFCOM in 2014, Chinese enterprises shall follow appropriate procedures to apply for approval or filling if they commence non-financial enterprises overseas, both for green-field investments, mergers and acquisitions or if they obtain ownership, control, operation, management rights and other rights from existing non-financial enterprises.

Since issuing a series of circulars and regulations such as the *Circular on Pilot Work Relating to the Examination and Approval of Overseas Investments* in 2003, MOFCOM has shifted its management principle on Chinese overseas investment from strictly controlled to relatively relaxed, transferring more authority to local commerce departments. In 2004, MOFCOM initiated an online system for issuing OFDI certificates, which greatly simplified the certificate application process. In 2009, MOFCOM issued the *Measures for Overseas Investment Management* with updated approval and filing requirements for Chinese enterprises investing in overseas entities, which require investments under US$100 million to be approved by the provincial commerce department instead of the central government. Enterprises with an investment amounting up to US$10 million in non-energy or mining related areas only, need to complete the Overseas Investment Application Form and submit it to the local commerce department, after which an "Overseas Investment Certificate" will be issued in 3 days.

In 2014, MOFCOM again updated *Measures for Overseas Investment Management* to further simplify the approval procedure, providing that only Chinese enterprises investing in non-financial companies in sensitive countries (areas) or sensitive industries, need to submit approval applications to MOFCOM. Other types of investments only need to go through the filing management process. Different overseas enterprise categories and their corresponding approval and filing requirements are depicted in Figure 1.

② *Measures for Overseas Investment Management*, MOFCOM, MOFCOM Order No. 3, 2014, 2014.9.6

Figure 1 Approval and Filing Procedures for Investing in Non–financial Enterprises Overseas



Note: According to the *Measures for Overseas Investment Management* issued by MOFCOM, sensitive countries and areas refer to countries that have not established diplomatic relations with China and those which are sanctioned by the United Nations. If necessary, MOFCOM can separately release an additional list of countries and areas for which investments also need to go through approval procedures. Sensitive sectors refer to industries involving specific products and technology with export restrictions by China, and those with influences beyond a country (region)' s interest.

To Apply for Approval to Invest in Non–Financial Entities Overseas, Enterprises Need to Submit the Following Materials:

- An application report, including specific situation of investor(s), name of overseas entity, ownership structure, sum of investment, scope of business, operating period, specific contents of investment, and funding sources of investment;
- Investment contract or agreement;
- Government's approval documents on restricted exporting products or technologies involved in overseas investments;
- A copy of business license.

After receiving application materials, MOFCOM will seek advice from economic and commercial sections of Chinese Embassies/Consulates, and make decisions within 20 business days. Approved enterprise will be issued an "Overseas Investment Certificate" . For those under the approval management of provincial commerce departments, local authorities also need to consult economic and commercial sections of Chinese Embassies/Consulates, and submit an initial review along with all application materials to MOFCOM within 15 working days after receiving all application materials. MOFCOM will make the decision and issue an "Overseas Investment Certificate" to approved enterprise within 15 business days after receiving comments from the provincial commerce authority.

Enterprises that apply through the filling process will only need to fill out the Filing Form with truthful, complete and compliant information, and declare that their investment activities will not harm China's national sovereignty, security and public interest, nor violate Chinese law and regulations; not damage relations between China and host countries; not violate international treaties and agreements China concluded and participated; not export products and technologies that China has banned to export. MOFCOM or Provincial Commerce Department will make the decision and issue an Overseas Investment Certificate to the approved enterprise within 3 working days after receiving the Filing Form.

Approval and Filing Requirements for Investing in Overseas Projects

According to the *Measures for the Administration of the Examination, Approval and Filing of Overseas Investment Projects*[3] issued by NDRC in 2014, enterprises that establish, merge, acquire or inject funds to overseas investment projects, invest in overseas projects by financing, or guarantee investments via their overseas enterprises or institutes, shall apply for approval or filing from NDRC or provincial Development and Reform Commissions(DRCs) according to circumstances[4], showing that NDRC is also gradually delegating approval authorities for major overseas projects, including major natural resource development projects and those requiring use of significant amount of foreign exchanges, to provincial DRCs.

③ Overseas investment projects refer to enterprises acquires ownership, management and administrative rights and other rights overseas through providing currency, negotiable securities, equity, creditor's rights, other forms of capitals, and guarantee.

④ *Measures for the Administration of the Examination, Approval and Filing of Overseas Investment* Projects, NDRC, NDRC Order No.9, 2014, 2014.4.8

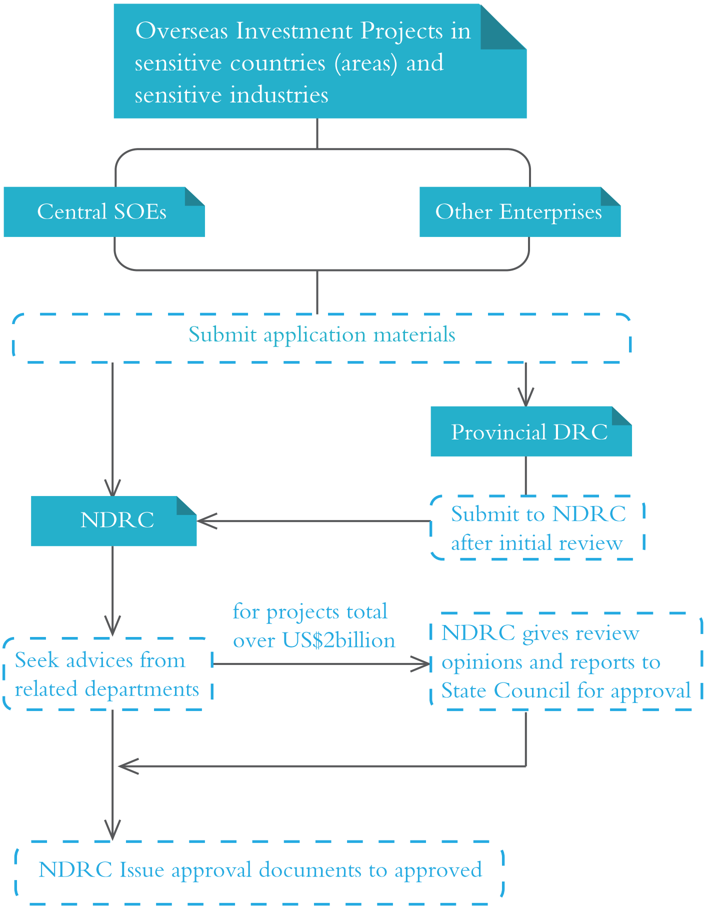
According to the *Interim Measures for the Administration of the Examination and Approval of Overseas Investment Projects* issued in 2004, for example, natural resource development projects with Chinese investment over US$200 million required examination by NDRC and reporting to the State Council for approval; for projects between US$30 million and US$200 million, only NDRC's approval was needed; projects with Chinese investment amounting to less than US$30 million simply required approval from provincial DRCs. In the *Circular on Doing a Good Job in Decentralizing the Power of Examination and Approval in Overseas Investment Projects* issued in 2011, provincial DRCs' approval authority was increased to US$300 million.

In 2014, the approval procedure of overseas investment projects was further simplified. NDRC released the *Measures for the Administration of the Examination, Approval and Filing of Overseas Investment Projects*, providing that Chinese enterprises' projects with US$1 billion investment or above, and projects in sensitive countries (regions) or sensitive industries, should submit applications to NDRC; SOEs' overseas investment projects with an investment less than US$1 billion, and local enterprises' projects with investment over US$300 million and below US$1 billion need only apply for filing to NDRC; and local enterprises' projects with investment below US$300 are under the filing management of provincial DRCs.

In December of the same year, NDRC announced modifications to *Measures for the Administration of the Examination, Approval and Filing of Overseas Investment Projects*, which changed the nature of the project application process. In this way, NDRC no longer required projects valued at more than US$1billion to apply for approval. Instead, NDRC removed the monetary requirement and instituted that projects in sensitive regions or industries need to apply for approval. Additionally, the projects in a sensitive regions or industries that total over US$2billion, require a review from NDRC and State Council approval.

Different categories of investment in overseas projects and their corresponding approval and filing requirements are depicted in Figure 2 and Figure 3.

Figure 2 Approval Procedures for Investing in Overseas Projects



Note: According to the *Measures for the Administration of the Examination, Approval and Filing of Overseas Investment Projects* issued by NDRC, sensitive countries and areas refer to countries that have not established diplomatic relations with China, those under international sanctions, and those engaged in wars and civil chaos. Sensitive sectors include but are not limited to: primary telecommunication operations, cross–border water resources development, large–scale land development, main power transmission lines, power grids and news media.

To Apply for Approval to Invest in Overseas Projects, Enterprises Need to Submit the Following Materials:

- An application report, including project name, specific situation of investor(s), necessity analysis of the project, project background and investment environment, project activities, investment and financial plan, and risk analysis. The applicant should also state whether assistance from the Chinese government is needed or not;

- Attachments to the application report, including the applicant's investment decision, documents illustrating the applicant's and foreign partner's (if any) asset, operation and financial situations, and bank's term sheet. For projects funded through asset and equity, capitalized contribution amount should be verified, and documents certifying the value of asset and equity should be submitted. For bid, merge, and joint venture projects, a frame agreement or letter of intent should be submitted.

To its assessment of an application for approval, the NDRC will determine whether projects are compliant with national laws, regulations and industrial policy, along with foreign investment policy. A project must also be consistent with principles of mutual benefit and common development; and must not jeopardize national sovereignty, security and public interest, or violate international treaties/agreements that China has ratified. A project will also be assessed for its compliance with relevant regulations of state capital project management, and whether the investors have appropriate capacity to complete the investment. The NDRC will either complete the approve process or report to the State Council within in 20 working days after receiving an application, and issue the approval document to the approved enterprise.

To apply for filing of investment in overseas projects, enterprises need to submit the following materials:

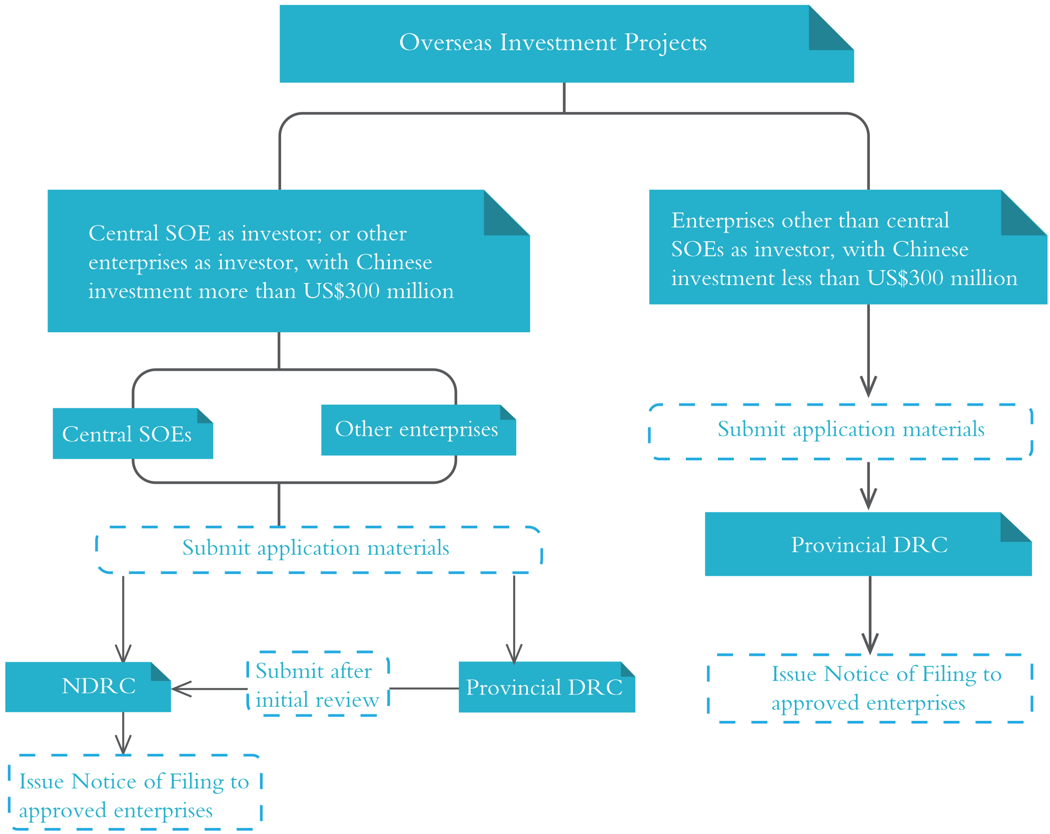
- An application report, including background and purpose of investment, fields of investment, project name, project location, specific situation of investor(s), basic situation of foreign partner (if any), project activities, amount of investment and funding source, what work that has already been carried out and next–step work plans;

- Attachments to the application report, including the applicant's investment decision and bank's term sheet. For bid, merger, and joint venture projects, a frame agreement or letter of intent should be submitted.

  The NDRC will assess an application for filling against t he same criteria as an application for approval (explained above). Filing process will be completed within in 7 working days after receiving an application, and the Notice of Filing will be issued to the approved enterprise accordingly.

For investment projects reported to provincial DRCs, requirements on application materials and the time frame for approval are based on detailed stipulation of provincial DRCs.

Figure 3 Filing Procedures for Investing in Overseas Projects



1.3 Supervision and Administration

Annual Inspection

Since 2003, OFDI annual inspection has been carried out in accordance with the *Interim Measures for the Joint Annual Inspection of Overseas Investment*. With continuous growth of OFDI and gradual establishment of related supervision and administration regulations, MOFCOM and SAFE issued the *Circular on Issues Concerning the Joint Annual Inspection of Overseas Investment* in 2009, and updated contents and requirements on the scheduling and targets of annual inspection. According to the new requirements, MOFCOM and SAFE evaluate the enterprises' overseas investments based on 4 aspects: (i) operation conditions, (ii) compliance with China's relevant OFDI regulations, (iii) compliance with relevant regulations of the host country, and (iv) comments from foreign exchange administration department.

The annual inspection system employs a scoring criterion, with 100 points as initial score and certain points will be deducted if enterprises violate laws or regulations in overseas investment activities. For instance, if an enterprise or its Chinese personnel abroad are penalized due to violation of laws and regulations of the host country, 10 points should be deducted; if an enterprise causes problems or disputes overseas due to issues related to quality, safety, environment protection, employment relations, or other similar issues, 10 points should be deducted[5].

⑤ *Measures for the Administration of the Examination, Approval and Filing of Overseas Investment Projects*, NDRC, NDRC Order No.9, 2014, 2014.4.8

Enterprises that do not take part in the annual inspection or do not submit annual inspection materials according to the regulations will not be eligible for consideration by the relevant commerce department for the Foreign Economic and Technology Cooperation Fund for that year, and SAFE will penalize the enterprise and its legal representative accordingly. When applying for the above-mentioned fund, domestic investors have to provide the appropriate annual inspection certificate for the current year. Only enterprises with an annual inspection rating of Level 1 and a score above 80 can take advantage of the fund.

Collection of Statistics

The *Statistical System of Direct Overseas Investment* was first implemented in 2003 to evaluate the overall status and changes in OFDI, and has since been supplemented and amended multiple times. According to the latest version issued in 2014, information on, but not limited to, the following aspects are required to be collected: basic information of domestic investors and enterprises overseas, investment and income distribution between domestic investors and enterprises overseas, the import and export of goods through enterprises overseas, merges and acquisitions through foreign investment and reinvestment through enterprises overseas, overseas economic and trade cooperation zones, and agricultural outbound investment and cooperation, aiming to collect more accurate information on China's OFDI, especially those investments through tax havens.

Annual statistics on OFDI are published by MOFCOM, SAFE and the National Bureau of Statistics in the form of an Annual Statistical Bulletin in both Chinese and English. The quantity and quality of the information included improves year upon year. The 2012 Annual Statistical Bulletin on China's foreign direct investment included information on China's OFDI flow, stock, distribution over regions and sectors, composition of investors, as well as the amount of China's OFDI and its distribution over sectors in major economies, such as the United States, the Europe Union and the Association of Southeast Asia Nations (ASEAN). There are also quarterly OFDI statistics briefing, which includes basic information on the number of enterprises investing overseas, the number of countries invested in and investment flows, and is published on the MOFCOM website periodically.

Safety Risk Prevention and Control

In terms of safety risk prevention and control, relevant government policies mainly focus on 3 aspects: production safety, company and personnel safety, and emergency response and handling.

In 2005, MOFCOM and MFA jointly issued the *Notice on Strengthening the Supervision and Administration of Work Safety of Overseas Chinese-funded Enterprises*, which requires offshore companies to perform safety work well, and also requires safety supervision departments at all levels and relevant industry authorities to fulfill their duties to oversee the production safety management of offshore companies. In 2010, MOFCOM, together with multiple other government agencies, issued the *Provisions on the Safety Management of Overseas Chinese-funded Enterprises, Institutions and Personnel*, which requires companies investing overseas to establish an offshore safety management system and emergency response mechanism. It also prescribes that MOFCOM and other relevant government agencies should establish security and risk monitoring and early-warning mechanisms for overseas enterprises and regularly send them information regarding security and timely security warnings.

In 2013, MOFCOM jointly issued the *Provisions of the Foreign Investment Cooperation Overseas Security Incident Response and Disposal* with several other government agencies. This requires national and local agencies in charge of commerce, foreign affairs, health, housing and urban-rural development, state-owned assets supervision and work safety administration, along with embassies and consulates, to share the responsibility of overseeing the management and handling of offshore safety incidents caused by wars, coups, terrorist attacks, natural disasters, etc. that represent a threat to or harm Chinese enterprises and their personnel overseas.

Bad Credit Recording

Bad credit record collection and disclosure is an information collection and dissemination mechanism introduced very recently to supervise and manage improper conduct by Chinese enterprises' overseas investment. In July 2013, MOFCOM, MFA and 7 other ministries jointly issued the *Tentative Measures for Bad Credit Records in Foreign Investment Cooperation and Foreign Trade Sectors* (hereinafter referred to as *Tentative Measures for Bad Credit Records*), which requires government commerce departments at all levels to cooperate with departments in charge of foreign affairs, taxation, foreign exchange and other related issues to establish corresponding local mechanisms.

Chinese embassies and consulates are required by the same measure to establish a bad credit record collection and dissemination mechanism in host countries. The measure also instructs MOFCOM to summarize information from different regions and publish it on the MOFCOM website to release bad credit information to the public. The bad credit record of overseas investment and cooperation would include behaviors such as conflicts with local people due to disrespecting local habits, customs or religion, safety incidents due to non-compliance with local production, technical and health standards, significant labor disputes due to violation of local labor laws, destroying the local ecological environment and threatening local public security among others.

Central SOEs Management

In regard to managing central SOEs' overseas investments, SASAC issued the *Interim Measures for the Supervision and Administration of Overseas State-owned Assets of Central SOEs* in 2011, which clearly states SASAC' s and central SOE' s supervision and administration responsibilities towards central SOEs' offshore state-owned assets, the supervision mode, and the legal liability to be borne by central SOEs due to violation of the regulations. SASAC is required to carry out basic management work such as registration of central SOEs' offshore state-owned assets, survey and performance appraisal, coordination efforts to handle major unexpected events, and ascertain related parties' responsibilities for major asset losses as established by the *Interim Measures for the Liabilities of Central SOEs for Asset Losses.*

In 2012, SASAC issued the *Interim Measures for the Supervision and Administration of Overseas Investment of Central SOEs*, which requires central SOEs to develop overseas investment plans and related management systems in addition to following the approval and filing procedure. The Interim Measures puts forward the five basic principles for overseas investment, which include observing laws and regulations of the host country and respecting local customs. It also requires central SOEs to conduct post-project evaluation management following the overseas investment implementation according to the *Guidelines on Post Project Evaluation of Central SOEs' Fixed Assets Investment.*

1.4 Supporting Policies

Finance and Tax Policy Optimization

A system involving policies on foreign exchange, credit, insurance, and taxation has been gradually established since 2003, creating an environment conducive for enterprises to invest overseas.

In 2003, SAFE launched a reform of the OFDI foreign exchange management system and gradually relaxed foreign exchange controls on foreign investment. In 2009, SAFE issued the Provisions on the Foreign Exchange Administration of the Overseas Direct Investment by Domestic Institutions, which further simplified the approval procedure for foreign exchange funds used for OFDI. It also clearly stated that domestic institutions could provide commercial loans and financing guarantees to support enterprises investing overseas.

Regarding support on credit and loans, NDRC jointly issued the Notice on Giving Credit Support to the Key Overseas Investment Projects Encouraged by the State with China ExIm Bank in 2004, and the Notice about the Relevant Issues on Strengthening Financing Support to Key Overseas-invested Projects with the CDB in 2005. The latter requires China ExIm Bank to arrange special funds to support key state overseas investment projects in its annual export credit plan and the CDB to do the same in its annual equity loan plan.

In terms of insurance, in 2005 NDRC and SINOSURE jointly issued the Notice on Several Issues Concerning the Establishment of Risk Prevention Mechanism by Key Overseas Investment Projects, establishing a risk prevention mechanism for key overseas investment projects. SINOSURE provides risk protection and services such as investment consultancy, risk assessment, risk control, and investment insurance to key state overseas investment projects, offering them discounted rates as well as simplified and expedited underwriting procedures.

The types of key overseas investment projects that can receive support on credit, loans and insurance include those covered by the scope of this study, such as overseas natural resource development projects that can make up for China's shortfall in domestic resources.

In terms of taxation, China has signed formal treaties with ninety-nine countries (as of June 2013), to avoid double taxation. In 2007, SAT issued Opinions about Doing a Good Job in the Taxation Service and Management Regarding the Overseas Investments by Chinese Enterprises requiring tax authorities at all levels to provide high-quality tax services to enterprises investing overseas, develop a standardized taxation service guideline for OFDI and an operation procedure for corporate overseas income tax collection.

Information Provision and Support

To encourage, support and direct enterprises to invest overseas, MOFCOM initiated an effort to regularly publish investment–related information on other countries (regions), providing guidance for foreign investment activities. Between 2004 and 2007, MOFCOM and MFA jointly issued the Catalogue of Countries and Industries for Guiding Investment Overseas and noted the industries suitable for investment in each country (regions) designated by agriculture, mining, manufacturing and service sectors. Enterprises that meet the requirements of the catalogue and hold the overseas investment approval certificate can enjoy preferential policies on aspects such as funding, foreign exchange, taxation, customs, entry and exit. Beginning in 2009, the Chinese Academy of International Trade and Economic Cooperation, the Investment Promotion Agency and the Counselors' Offices MOFCOM have prepared and updated the Guide to Investment in Different Countries (Regions) each year to introduce the investment and cooperation environment and to give tips on issues concerning multinational operations. The 2013 edition of the guide already covered 165 countries and regions and included, in addition to investment–related data, policy and regulation updates on each country, the debt situation, infrastructure development plans, build–operate–transfer (BOT) procedures, anti–commercial bribery policies and regulations, as well as risk prevention briefings based on firms' feedback.

02

Analysis of Environmental and Social Policies

2.1 Requirements and Guidelines on Environmental and Social Behaviors

The “going global" strategy, has accelerated a rapid expansion of China’s overseas investments. However, this has also resulted in concerns over the environmental and social misconduct of these Chinese enterprises overseas, expressed by host country governments, local civil society organizations (CSOs) and communities. There has also been an increasing number of associated disputes and protests arising from these concerns.

As a result of advocacy efforts by research institutions, CSOs and media, the Chinese government has paid increasing attention to environmental and social issues brought about by overseas investments. Since MOFCOM and SFA released China’s first social and environmental behavior guidelines in 2007,– *A Guide on Sustainable Forest Cultivation by Chinese Enterprises*, several other policies have followed suit to guide environmental and social behaviors of Chinese enterprises overseas. The 12th National FYP also clearly states that enterprises "going global" and their overseas collaboration projects must fulfill social responsibilities and benefit the country’s citizens.

This section provides a brief introduction to the official Chinese government’s environmental and social requirements and guidelines. Similar environmental and social related guidelines have also been issued by chambers of commerce and industrial associations, such as the *Guidelines for Social Responsibility in Outbound Mining Operations*, launched by the Chamber of Commerce of Metals, Minerals and Chemicals Imports and Exports (CCCMC). These, however, are more for internal guidance within a certain sector or association, rather than officially issued by the government. They are thus not covered in this section.

Corporate Social Responsibility (CSR)

MOFCOM, MFA and SASAC jointly issued the *Notice on Further Regulating the Foreign Investment and Cooperation of Chinese Enterprises* in 2008, which requires companies engaging in foreign investment and cooperation to observe laws, operate with integrity, and fulfill social responsibilities. Enterprises that violate laws and regulations and cause severe consequences will be punished or fined by MOFCOM, MFA and SASAC.

Again in 2013, MOFCOM issued the *Provisions on Regulating Competitive Behavior in Foreign Investment and Cooperation*, which clearly requires enterprises to abide by the precepts of equality, fairness, honesty and not to engage in unfair competition through bribery. The Provisions also points out that enterprises should "observe laws and regulations in the host country or region, respect local customs, value the environment, safeguard local labor rights, actively participate in local public welfare and fulfill necessary social responsibilities."

Article XX of the the new *Measures for Overseas Investment Management* issued by MOFCOM in 2014 further requires, in Article XX, that overseas companies with Chinese investment should abide by laws and regulations of host countries, respect local customs, fulfill social responsibilities, have good performances on environmental protection, labor protection, and enterprise culture construction, and promote integration with local communities.

Except for these three regulations, the 2009 *Circular on Issues Concerning the Joint Annual Inspection of Overseas Investment*, and the 2013 *Tentative Measures for Bad Credit Record* also require enterprises to follow Chinese and host country laws, and to protect environment.

Green Credit

The China Banking Regulatory Commission (CBRC) issued the *Green Credit Guidelines* in 2012. This requires Chinese banking institutions to recognize, quantify, monitor and control environmental and social risks in credit transactions, establish an environmental and social risk management system, and improve the relevant credit policy system and procedure management. The *Green Credit Guidelines* point out that for an overseas project to be granted credit lending, banking institutions should ensure that the project initiator complies with environment, land, health, safety and other relevant laws and regulations, and consistently follows international good practices. It also advises the banking institutions to publicize their green credit strategies and policies, and to disclose related information on lending to projects with significant environmental and social risks in accordance with laws and regulations in order to receive oversight from the market and stakeholders.

Environmental Protection

In 2013, MOFCOM and MEP jointly released the first comprehensive guidelines focusing on Chinese enterprises' environmental behavior related to overseas investment, the *Guidelines on Environmental Protection for Overseas Investment* and Cooperation (hereinafter the *Environmental Protection Guidelines*). This requires all Chinese enterprises operating overseas to learn and observe the laws and regulations of the host country and fulfill basic or international environmental obligations, such as environmental impact assessment (EIA), pollutant discharge standards, and emergency management. It also encourages enterprises to enhance the areas that are non-compulsory but of great importance for corporate development such as establishing a communication mechanism, following local social, cultural ethnic customs, and increasing the local employment rate. In addition, it encourages enterprises to adopt more advanced environmental concepts and practices such as clean production, circular economy and green procurement[6].

[6] Long, F., Ge C. (2013) "Interpretation of the Guidelines on Environmental Protection for Overseas Investment and Cooperation", Environmental Protection, 7: 55-56.

Forestry

Forestry is the first OFDI sector for which the Chinese government introduced environmental and social guidance. MOFCOM and the State Forestry Administration (SFA) first issued the *Guide on Sustainable Overseas Silviculture by Chinese Enterprises* (hereinafter the Silviculture Guide) in 2007, followed by the Guide on Sustainable Management and Utilization of Overseas Forests by *Chinese Enterprises* (hereinafter the *Management and Utilization Guide*) in 2009. SFA and MOFCOM are planning to issue a third forestry guide, the *Guidelines on Sustainable Trade and Investment of Overseas Forest Products by Chinese Enterprises*, the draft of which was recently going through public consultation and will be released soon.

The *Silviculture Guide* provides guidance on aspects ranging from silviculture plan development, forestry staff training, the introduction of seedlings, to plantation design and business operation. It clearly states that Chinese overseas forestry enterprises are required to observe Chinese and host country laws and operate according to sustainable development principles while strengthening environmental protection, conservation of biodiversity, and promoting local community development.

2.2 OFDI Environmental and Social Policy Analysis

Researching on China's monitoring and management system for overseas investment policies, supportive policies and social and environmental policies has revealed that the Chinese government, on the one hand, simplifies the approval procedure, develops supportive taxation, finance and insurance policies to encourage enterprises to "go global"; but on the other hand, recognizes the exiting environmental problems and social risks generated by investments. Therefore, relevant regulations and guidelines have been gradually developed to guide enterprises to obey both Chinese and host countries' laws, and carry out environmental and social responsibilities during their overseas investment activities.

How are binding effects of Chinese OFDI environmental and social policies? What are the obstacles to the effective implementation of the policies, and how to encourage enterprises to comply with these policies? This chapter attempts to answer these questions through analysis based on interviews and discussions with Chinese stakeholders as well as GEI's experience in the area.

2.2.1 Binding Policies and Voluntary Guidelines

The overall objectives of environmental and social policies basically align with each other and aim to encourage enterprises to observe laws, protect the local environment, respect local residents, and achieve sustainable development of foreign investment. However, when it comes to different policies, they are not always binding.

Binding policies and relevant regulations clearly define the legal liability and enforcement body of enterprises that violate the laws, and have been effectively implemented, thereby becoming the most effective external motivation to improve enterprises' environment and social behaviors overseas. Non-binding policies mainly focus on encouraging and guiding enterprises; if feasible, with the appropriate promotion and training, they could become main forces to promote effective implementations as affiliated policies.

The following four current policies have binding effects on environmental and social conducts of Chinese investment overseas: the *Circular on Further Regulating the Foreign Investment Cooperation of Chinese Enterprises*, the *Provisions on Regulating Competitive Behavior in Foreign Investment and Cooperation*, the *Circular on Issues Concerning the Joint Annual Inspection of Overseas Investment*, and the *Tentative Measures for Bad Credit Records*. Excerpts of related policy text from these policies are provided in Annex A for further reference.

When a Chinese enterprise violates the provisions in the above-mentioned policies, it will be punished accordingly; when fails to fulfill its corporate social responsibilities and causes disputes concerning environment, labor, safety and other issues, the enterprise will lose its eligibility for support granted by relevant policies.

Policies aimed at providing guidance to Chinese enterprises on proper environmental and social conduct, for example *A Guide on Sustainable Forest Cultivation by Chinese Enterprises*, *A Guide on Sustainable Forest Management and Utilization by Chinese Enterprises*, *Green Credit Guideline, and Environmental Protection Guidelines*, are all voluntary. Enterprises are free to choose whether to comply with these guidelines or not.

2.2.2 Obstacles to Implementing Environmental and Social Policies and Guidelines

Effective operation process, publicity, promotion of policies and relevant government departments' supervision and monitoring are key factors to implement effective policies and achieve desired objectives. To implement environmental and social policies overseas, relevant government departments with forceful rights can punish enterprises accordingly if they violate the laws or regulations during investment activities. Based on our research, we found that asymmetry information, the lack of promotion and the lack of policy operability are three major problems exist in the implementation process of social and environmental policies.

Information Asymmetry

Through policy text analysis, it was found that the requirement of "observing laws and regulations of host countries" has been listed in multiple binding policies. However, an information gap was identified in terms of policy implementation. Relevant Chinese government departments actually rely on the results of supervision and enforcement of host country laws to appraise the conduct of Chinese enterprises overseas, but an information exchange mechanism between the Chinese government and host countries on illegal behaviors of Chinese overseas enterprises is yet to be established. It is therefore difficult for relevant Chinese government departments to collect comprehensive and reliable information to penalize enterprises not "observing laws and regulations of the host countries."

For example, according to the *Tentative Measures for Bad Credit Records*, behaviors which might result in conflict with local people, such as disrespecting local habits, customs or religion, causing safety incidents due to non–compliance with local production, technical and health standards, entering into serious labor disputes due to violating local labor laws, destroying local ecological environment, and threatening local public security, should be included in the bad credit records. Although government commerce departments in China at all levels are required to cooperate with other related departments to establish an information collection and dissemination mechanism in their jurisdiction, and the Chinese embassies and consulates are required to establish a bad credit record collection and dissemination mechanism in host countries, methods of collecting and recording relevant information remains a problem. The *Tentative Measures for Bad Credit Records* was issued in July 2013. As of July 2015, no information related to credit records have been published on government websites.

Lack of Policy Publicity and Promotion

The prerequisite to have enterprises observe environmental and social policies and guidelines is to effectively inform decision makers and implementers within these enterprises.

The Chinese government currently relies predominantly on notifications to SOEs, official websites, media reports and press releases to publicize and promote relevant policies, with official websites the main platform. For example, MOFCOM and China's Outward Investment and Economic Cooperation websites have policies and regulations columns dedicated to publishing information on regulations that enterprises must know before investing overseas. However, publicity and promotion work that stops merely at releasing information publicly is insufficient, since the non–binding nature of such policies does not provide enterprise with enough incentive to seek this information.

In addition to Chinese enterprises, government departments of host countries and dometic and international civil groups are also stakeholders of policy implementaion. The life and work of relevant government departments and civil groups in host countries are directly impacted by the behaviors of Chinese investors. They could play an important role in supervising enterprises and facilitating effective policy implementation given a good understanding of these policies, and provide information regarding the compliance, environmental and social behavior of investors to Chinese embassies, consulates or MOFCOM. However, the reality is that such policies are barely known to stakeholders in host countries because of language barriers and lack of policy advocacy.

Low Practicality

In addition to a lack of policy advocacy, the low practicality of environmental and social guidelines is another important reason why policies bear little influence on overseas enterprises.

For example, the *Environmental Protection Guidelines* provide guidance on aspects that an enterprise can work on to achieve good environmental performance, such as requirements and recommendations to establish an internal environmental protection and training system, carry out environmental, health and safety training, conduct environmental due diligence and EIA, and establish a CSR communication and dialogue mechanism, but contains no tangible procedures or instructions. An enterprise may be willing to follow the guidelines, but find adherence difficult, without the backing of a specialist environmental and social management team, an inexperienced team, or if they face challenges identifying and working with specialized local consulting companies in host countries.

2.2.3 Policy Recommendations

Information asymmetry, insufficient policy publicity and promotion and lack of specific tangible steps in guiding policies are the major issues facing successful application of environmental and social policies, and adoption of voluntary guidelines, on Chinese overseas investment. Drawing from GEI's previous years of experience in this field, policy review and interviews conducted during this research, the following measures are recommended as potential solutions:

Establish Mechanisms for Information Exchange and Disclosure

An information exchange and disclosure mechanism, which should be straightforward, accurate and comprehensive, would provide a strong basis for effective implementation of Chinese overseas environmental and social policies. The issuing of Tentative Measures for Bad Credit Records in Foreign Investment Cooperation and Foreign Trade Sectors in 2013 showed that relevant government departments have recognized the importance of effective information in overseeing enterprises' environmental and social behavior overseas. For information collection, it is necessary to establish a smooth information exchange mechanism within relevant Chinese government departments, as well as between the Chinese government, host country governments and NGOs. On the other hand, a parallel information disclosure mechanism open to public access would allow public monitoring of enterprises' environmental and social behavior, and increase public pressure for enterprises to improve their environment and social conduct.

CASE 1

Green Home and CEE Bankwatch Network Communicating with MEP and China ExIm Bank Regarding the Pljevlja II lignite Power Plant in Montenegro

In early 2014, Montenegro environmental NGO Green Home and CEE Bankwatch Network jointly wrote to China ExIm Bank, the Chinese Embassy in Montenegro, MOFCOM and MEP to point out that the planned Pljevlja II lignite power plant project in northern Montenegro could potentially lead to a wide range of environmental and social issues, since no bid from Chinese Enterprises complied with the *EU Industrial Emissions Directive* for dust emissions, or reached the efficiency levels associated with the *EU Best Available Techniques*. Furthermore, the offers were not in line with the new pollution standards for new coal plants in China, which,therefore, violated the *Green Credit Guidelines* as well as the standards for environmental and social impact Assessments of the China ExIm Bank's Loan Projects. Green Home and CEE Bankwatch Network was contacted for further details via telephone by China ExIm Bank after sending out the joint letter.

Although it is still unknown whether the Pljevlja II lignite power plant project will be supported financially by the China ExIm Bank, it is certain that relevant Chinese government departments are willing to refer to information provided by NGOs, and effective communication is beneficial to improving enterprises' environmental and social conduct.

Notes:
(1) This case study is based on dialogues and information exchange between the author and relevant personnel.

(2) Montenegro is a signatory of the European Energy Community Treaty and is also applying to become an EU member state. Therefore, Montenegro needs to adjust domestic legislation to comply with EU laws and regulations. The final offers were submitted by Chinese enterprises on May 29, 2014 to the Government of Montenegro. However, because information related to bids and technical solutions is not publicly available, it remains unclear whether the compliance issue of dust emissions is solved or not.

(3) Green Home is a NGO committed to environmental protection and promoting community, social and economic progress as well sustainable development in Montenegro. CEE Bankwatch Network is an international NGO network with member organizations from Central and Eastern Europe, the Balkans, Central Asia and the Caucasus, which aims to promote environmentally and economically sustainable development through communication between international financial institutions.

Promote Policies through Multi–party Participated Demonstration Projects

Due to restraints on human and financial resources, the Chinese government can only take limited approaches to promote environmental and social policies and guidelines for overseas investment. The successful promotion of the *Guide to Sustainable Overseas Forests Management and Utilization by Chinese Enterprises* (Case 2), however, shows that demonstration projects could effectively facilitate guideline adoption by enterprises, and both enterprises and government departments could benefit from this multi–party approach that incorporates the environmental and community knowledge of NGOs. With communication and cooperation between the government, enterprises and civil society groups on the promotion and implementation of overseas investment–related policies being encouraged, the likelihood of translating such environmental and social policies into actions within the enterprise–level will be significantly increased.

CASE 2

Guide on Sustainable Management and Utilization of Overseas Forests by Chinese Enterprises

In 2009, the *Guide on Sustainable Management and Utilization of Overseas Forests by Chinese Enterprises* (hereinafter referred to as the Guide in this case study) was jointly issued by the SFA and MOFCOM. To further promote the Guide, the SFA released its

English version in 2010, translated it into a further three more languages and published Chinese-French, Chinese-Russian, Chinese-Portuguese bilingual versions in 2011, andissued them to Chinese enterprises, foreign enterprises, international organizations and NGOs in relevant countries.

In the five years following the release of the Guide, the SFA carried out different pilot projects with Chinese enterprises in Chita and Khabarovsk in Russia, Gabon, Guyana, Mozambique, etc. and organized multiple trips for a group of experts from the Research Center for Economics and Trade in Forest Products (RCETFOR) at SFA, the World Wildlife Fund Beijing Office (WWF-Beijing), the International Union for the Conservation of Nature (IUCN) China, etc. to support these pilot projects. The expert group provided capacity building and technical support for these enterprises through trainings on the Guide, checking compliance, explaining different situations referring to specific lines in the Guide, and discussing with the enterprises about actual problems collected through questionnaires.1

In June of 2011, RCETFOR, WWF-Beijing and IUCN-China co-hosted the conference “Initiative on Sustainable Management and Utilization of Overseas Forest by Chinese Enterprises” in Shanghai. During the conference, representatives from Xinlin Baikal Ltd. and Gabon Sanli Corporation shared theirsuccessfulexperiences piloting the Guide, and an Initiative was signed by representatives from ten enterprises, including the Xinlin Baikal Co., Ltd, Gabon Sanli Co., Nature Home (China) Co.Ltd, Power Dekor Group, Yueyang Paper Co. Ltd., China Forest Products Distribution company among others, appealing to society as a whole to conserve the forest, protect the environment and build a better planet. 2

1、SU H., HANZ., and TIAN H. “Pilot Projects on Guide on Sustainable Management and Utilization of Overseas Forests by Chinese Enterprises Assist Forestry enterprises Going Global” *Chinese forestry industry* 3 (2011): 23.

2 、State Forestry Administration "Initiative on Sustainable Management and Utilization of Overseas Forest by Chinese Enterprises" http://www.forestry.gov.cn/portal/main/s/586/content-490024.html (accessed June 10, 2014).

Make Chinese Environmental and Social Guidelines Effective

From previous sections we can see that the Chinese government has made efforts in recent years to provide guidance to Chinese companies operating overseas, especially SOEs. This includes environmental guidelines issued by MEP, MOFCOM and SFA, and CSR regulations for SOEs by SASAC. SOEs and private companies, however, often remark that they are unclear about how to apply or integrate them into their work, since the guidelines are more general principles and lack tangibility. It is therefore suggested that relevant organizations seek to work with MEP, MOFCOM, SFA, etc. to promote practical environmental and social management standard operating procedures (SOPs) and checklists based on these guidelines.

Further to SOPs and checklists, country– and industry–specific environmental and social guidelines and/or practical manuals tailored for Chinese companies operating in a certain industry of a certain country (say, a Chinese hydropower company in Laos) would prove extremely useful, as different industries require different emphasis on environmental protection measures. This would not only provide companies with clear instructions of what to do and how to do it, but also provide opportunities for civil societies to monitor companies' environmental and social behaviors. The design and development of such guidelines and/or manuals could be discussed in cooperation with Chinese industrial associations, Chinese Chambers of Commerce in host countries, and relevant Chinese government agencies.

Based on specific guidelines and practical manuals, and drawing from international experiences and practices, a set of criteria and methodologies to evaluate companies' environmental and social conduct could also be established. Further engagement with Chinese financiers of large overseas investment projects, particularly the China ExIm Bank and CDB as key players in project financing, is also strongly suggested. This could include a collaborative research project on feasible incentive mechanisms, such as the approval and terms of loans and amount of credit, for those companies with a good record in implementing the guidelines. Efforts to establish evaluation methodologies and criteria will require cooperation and endorsement from relevant Chinese government agencies; while the exploration of incentive mechanisms will involve not only the ExIm Bank, CDB and CBRC, but also a wide range of stakeholders such as Chinese overseas companies, host country governments and NGOs.

SASAC is a main regulatory and supervisory government body concerning the behaviors of SOEs. Therefore, further engagement and collaboration with SASAC will be critical in terms of improving SOEs' environmental and social conduct. This could include the integration of sustainability–related indicators into SASAC's SOE evaluation system, which would provide incentives for SOEs to incorporate sustainability into their internal policies and working procedures. In addition, most SOEs tend to be conservative when approached by NGOs; thus a partnership with SASAC would also facilitate working with SOEs as well.

CASE 3

Guidelines for Social Responsibility in Chinese Outbound Mining Investment

Drafted by China Chamber of Commerce of Minerals, Metals and Chemicals Importers and Exporters (CCCMC), the *Guidelines for Social Responsibility in Chinese Outbound Mining Investment* (hereinafter referred to as the *Mining Investment Guidelines*) is expected to be released in late 2014, which provides a great example of how to make OFDI environmental and social guidelines more specific and tangible.

In the process of developing the *Mining Investment Guidelines*, CCCMC actively solicited different stakeholders, including government institutions, mining enterprises, research institutes and NGOs, for advice. Its approach included direct consultations with experts, stakeholder roundtables, enterprise visits, and an online draft public consultation, to enable the content, language and tangibility of the *Mining Investment Guideline* to be accepted by multiple parties. The *Mining Investment Guidelines* is organized into different levels in terms of the content, which greatly enhances its practicality. It includes the following eight major issues: organizational governance, fair operating practices, supply chain management, human rights, labor issues, health and safety, environment, community involvement and engagement. Each issue contains multiple major clauses and sub–clauses. Major clauses are the main requirements for social responsibility, while the sub–clauses clarify main clauses and provide suggestions on how to implement them.

In addition, the *Mining Investment Guidelines* also includes specific requirements for its implementation. It requires Chinese companies engaged in outbound mining investments to proactively apply for piloting its implementation, and CCCMC to actively provide trainings, workshops, exchanges and other measures to strengthen the capacities of Chinese companies and to widely promote the *Mining Investment Guidelines* in its international exchange activities. The list of international standards referred to in the process of guideline development is also included as an annex.

Note: This case is based on the Second Stakeholder Roundtable on "Guideline on Social Responsibility in Chinese Outbound Mining Investments" attended by the author on March 26, 2014, which is organized by CCCMC.

Annex A Related Text and Contents from Current Policies with Binding Effects on Environmental and Social Conduct of Chinese Enterprises Overseas

Circular on Further Regulating the Foreign Investment Cooperation of Chinese Enterprises

Article II stipulates that enterprises should:

"Raise awareness on observing laws and operating with integrity, carefully study and strictly comply with China's laws, regulations and policies regarding foreign investment and cooperation, as well as laws and regulations of host countries, particularly environment, labor, immigration, safe production and public bidding related regulations, and conscientiously perform necessary social responsibilities."

"Pay great attention to labor issues and manage appropriately. According to the concept of "Scientific Development", enterprises should implement the concept of "take people as the foremost" in management and practice, providing salary, benefits and working conditions based on laws and agreed contracts for domestic dispatched workers and local employees. Enterprises should also make efforts to broaden communication channels with domestic dispatched workers and local employees, and provide positive feedback for their reasonable requests, thereby offering a more harmonious working environment."

"Focus on developing community harmony and seeking common development in investee countries. Enterprises should maintain good relations with foreign governments, pay attention to strengthening communication with local trade unions, social media, religious groups, ethnic and social leaders and other social forces to receive their understanding and support. Enterprises should also promote business localization and job creation for locals, enhance the political sensitivity, and avoid getting involved in disputes of local politics and economic interests."

Article V stipulates that:

"Ministry of Commerce (MOFCOM), Ministry of Foreign Affairs (MFA) and State-owned Assets Supervision and Administration Commission (SASAC) shall punish or fine enterprises violating laws and regulations and cause severe consequences according to relevant provisions. MOFCOM will issue criticism, warning, failure notice of annual inspection failing notice accordingly to involving enterprises, or have their business certificate suspended or revoked. MFA will accordingly penalize relevant enterprises or their managing authorities on rights concerning foreign affair approval, passport application, and visa application self-service or through agents. SASAC will issue penalty accordingly against enterprises causing adverse impact and enterprise representatives. "

"Local commerce authorities, foreign affairs departments, the State-owned Asset Supervision and Administration Commission should be in accordance with this notice, taking appropriate actions such as fine or other punishments against local business that have caused illegal and serious consequences."

Provisions on Regulating Competitive Behavior in Foreign Investment and Cooperation

Article VII stipulates "that enterprises should observe laws and regulations in host countries/regions, respect local customs, value the environment, safeguard local labor rights, actively participate local public welfare activities and fulfill necessary social responsibilities."

Article X requires MOFCOM to "carry out supervision and inspection functions. MOFCOM can entrust local commerce departments, commercial institutions at Chinese embassies or other relevant institutions to investigate and identify unfair competition in overseas foreign investment in accordance with the provisions of laws and regulations. Organizations or individuals involving in the process shall provide cooperation and assistance."

Article XI requires "MOFCOM to cooperate with relevant departments to establish a bad credit record system for foreign investment, record the foreign investment and cooperation activities violating the Provisions and causing unfair competition, and report to relevant departments and organizations. Involving enterprises shall not enjoy the support of relevant policies within three years."

Article XII explicitly states that "the commerce department will penalize the parties violating the provisions in accordance with the Administrative Regulation on Contracting Foreign Projects, the Regulation on the Administration of Foreign Labor Cooperation and the Measures for Overseas Investment Management."

Measures for Overseas Investment Management

Article XX requires enterprises "to comply with laws and regulations; respect local customs in investee countries; fulfill social responsibilities; implement environmental protection, labor protection, construct corporate culture to promote the integration with locals."

Article XXX II requires that "if overseas investments appear as what Article XXVIII and Article XXXI describe, and violate relevant rules; enterprises are not going to be benefited from any supportive policies."

Tentative Measures for Bad Credit Records in Foreign Investment Cooperation and Foreign Trade Sectors

It made the implementation of Article XI in the Provisions on Regulating Competitive Behavior in Foreign Investment and Cooperation specific. The establishment of Bad Credit Records System, as required by the Measures, will provide information basis and support for relevant government agencies to management non–compliance OFDI activities.

The Circular on Issues Concerning the Joint Annual Inspection of Overseas Investment

"10 points should be deducted from the total 100 points if enterprises overseas and their dispatched Chinese personnel are penalized due to violation of relevant laws and regulations of host country. If enterprises overseas cause problems/disputes due to issues related to quality, safety, the environment, labor and owner relations, etc., a further 10 points should be deducted. For enterprises that do not comply with the regulations to participate in annual inspection and submit annual inspection materials, the relevant commerce department will not accept its application for the Foreign Economic and Technology Cooperation Fund for that year, and SAFE will penalize the enterprise and its legal representative accordingly. When applying for the Foreign Economic and Technology Cooperation Fund, domestic investors have to provide the relevant annual inspection certificate for the current year. Only an enterprise with an annual inspection rating of Level 1 and a score higher than 80 can enjoy support of the fund."

Annex B List of China's OFDI Policies

Category	Title	Issuing Authority	Date Issued	Main Content	Link to Original Text
Examination and Approval	Measures for the Administration of the Examination, Approval and Record Keeping of Overseas Investment Projects	National Development and Reform Commission (NDRC)	08/04/2014	Provide examination, approval, and filing procedures of overseas investment projectsand requirements for project applications	http://www.sdpc.gov.cn/zcfb/zcfbl/201404/W020140410560098013507.pdf
	Measures for Overseas Investment Management	Ministry of Commerce (MOFCOM)	16/03/2009	Requireenterprises' investment and collaboration overseas to be examined, approved and certified byMOFCOM and its agencies at the provincial levelthrough the "overseas investment management system" , and enterprises should manage their overseas investment behavior according relative regulations.	http://file.mofcom.gov.cn/article/gkml/201304/20130400104565.shtml
Credit Support	Administrative Measures for the Provision of Foreign Guarantees by Domestic Institutions	State Administration of Foreign Exchange (SAFE)	01/10/1996	Provide specific administrative measures for the provision of foreign guarantees by domestic institutions.	http://www.pbc.gov.cn/publish/chubanwu/545/1022/10226/10226_.html

	Notice on Giving Credit Support to the Key Overseas Investment Projects Encouraged by the State	NDRC and Export–Import Bank of China (China ExImBank)	27/10/2004	Require NDRC and the China ExIm Bank to jointly build an overseas investment credit support system, identify key projects eligible for special overseas investment loans identified, and stipulate application and examining procedures for credit support.	http://www.sdpc.gov.cn/fzgggz/wzly/jwtz/jwtzzn/200507/t20050714_35633.html
	Notice about the Relevant Issues on Strengthening Financing Support to Key OverseasInvestment Projects	NDRC and China Development Bank (CDB)	25/09/2005	In line with the national overseas investment development planning, NDRC and CDB shall make the annual financing support plan, under which the CDB will arrange some loans within its annual equity loan size to support key overseas investment projects encouraged by the state. The loans will be issued to help the projects increase their capital and improve their fundraising capacity.	http://www.sdpc.gov.cn/fzgggz/wzly/jwtz/jwtzzn/200509/t20050928_44059.html
	Notice on the Administration of Foreign Guarantees Provided by Domestic Institutions	SAFE	30/07/2010	To support domestic institutions to "go global" and meet the demands of enterprises investing overseas for domestic credit policy support, the Notice eases the qualifications for guarantees, relaxes guarantors' financial index restrictions, reducesprofitability requirements for guarantees, adjusts the management and examining methods for external guarantee balance quotas, clarifies management methods for banks' non–financing guarantees, abolishes the examining and approval process of external guarantee performance by banks.	http://www.gov.cn/gzdt/2010–07/30/content_1668261.htm

Foreign Exchange Administration	Provisions on the Foreign Exchange Administration of the Overseas Direct Investment by Domestic Institutions	SAFE	13/07/2009	Stipulate SAFE' s role on registration and filing for domestic institutions' overseas direct investment, related capital and equity, with detailed requirements for foreign exchange registration, as well as outward and inward remittance.	http://www.gov.cn/gongbao/content/2010/content_1539417.htm
Insurance Service	Notice on Several Issues Concerning the Establishment of Risk Prevention Mechanism by Key Overseas Investment Projects	NDRC and China Export and Credit Insurance Corporation (SINOSURE)	25/01/2005	SINOSURE shall provide investment consultation, risk evaluation and control, investment insurance and other risk prevention services to key overseas investment projects. To projects encouraged by the state, SINOSURE shall offer preferential rates with simplified and fasterunderwritingprocedures.	http://www.shanxigov.cn/n16/n1398/n2108/n5640/n28511/786209.html
Taxation	Interim Measures for Calculating and Levying Income Tax on Income from Abroad (Revised Version)	Ministry of Finance (MOF), State Administration of Taxation (SAT)	01/01/1997	Specify the calculation of income from abroad, deficit remedy, the computing of tax payable, offshore tax deduction, foreign tax credits policies.	http://www.czj.sh.gov.cn/zcfg/gfxwj/szl/qysds/201011/t20101105_95079.html
	Opinions about Doing a Good Job in the Taxation Service and Management Regarding the Overseas Investments by Chinese Enterprises	SAT	20/03/2007	Taxation authorities at all levels shall provide quality services for enterprises investing overseas with improvedtaxpolicies and standard tax service guides, and establish standard procedures for the collecting of state-owned enterprises' overseas income tax.	http://www.chinatax.gov.cn/n8136506/n8136563/n8193451/n8193481/n8193947/8240722.html

Supervision and Management	Interim Measures for the Joint Annual Inspection of Overseas Investment	Ministry of Foreign Trade and Economic Cooperation (Later replaced by MOFCOM), SAFE	31/10/2002	Specify the time, content and procedure forthe joint annual inspection of overseas investment, audit standards, as well as legal responsibilities for enterprises failing to report their investment.	http://www.gov.cn/gongbao/content/2003/content_62655.htm
	Circular on Issues Concerning the Joint Annual Inspection of Overseas Investment	MOFCOM, SAFE	16/12/2009	Inspect enterprises' overseas investment referring to theses four aspects: enterprises' business operation conditions overseas, compliance with the relevant Chinese OFDI regulations, compliance with relevant regulations of the host countries, evaluation by foreign exchange administration departments. Relevant commerce departmentsshall not accept the enterprises' application for the Foreign Economic and Technology Cooperation Fund the year from those not complying with annual inspection rules. SAFE will penalize the enterprises and their legal representatives accordingly.	http://www.mofcom.gov.cn/aarticle/b/g/201001/20100106759123.html
	Statistical System of Direct Overseas Investment	MOFCOM, National Bureau of Statistics (NBS), SAFE	21/12/2012	Provide for the main content, index, information–collecting methods and reporting channels for the statistical work on direct overseas investment, as well as content, scheduling and methods related to the publication of statistics.	http://www.mofcom.gov.cn/aarticle/b/bf/201212/20121208507450.html

Production and Personnel Safety	Notice on Strengthening the Supervision and Administration of Work Safety of Overseas Chinese–funded Enterprises	Ministry of Foreign Affairs (MFA), MOFCOM, etc	05/09/2005	Require Chinese investors in offshore companies to perform duty on supervision and administration for work safety; require offshore companies to strictly abide by production safety laws in host countries; require safety supervision departments at all levels and relevant industry authorities to fulfill their duties to oversee production safety management of offshore companies and the handling of the aftermath of accidents as well as hold those responsible to account.	http://www.chinasafety.gov.cn/newpage/Contents/Channel_4389/2005/1226/45126/content_45126.htm
	Provisions on the Safety Management of Overseas Chinese–funded Enterprises, Institutions and Personnel	MOFCOM, SAFE	30/08/2010	Require companies investing overseas to establish an offshore safety management system and emergency response mechanism; require their domestic supervising agencies to develop safety measures and emergency plans; MOFCOM, MFA and other government agencies are required to establish security and risk monitoring and early–warning mechanisms for offshore enterprises, to regularly inform them of security information and send timely security warnings	http://www.mofcom.gov.cn/article/b/bf/201008/20100807087099.shtml
	Provisions of the Foreign Investment Cooperation Overseas Security Incident Response and Disposal	MOFCOM, MFA, etc.	01/07/2013	Establish security risk response mechanisms with clear agency roles and responsibilities in dealing with wars, coups, terrorist attacks, kidnappings, crime against public security, natural disasters, public health and production safety accidents and other incidents.National and local agencies in charge of commerce, foreign affairs, health, housing and urban–rural development, state–owned assets supervision and work safety administration as well as embassies and consulates all share the responsibility of overseeing the management and handling of offshore safety incidents.	http://www.mofcom.gov.cn/article/b/g/201311/20131100395823.shtml

Environmental Protection and Corporate Social Responsibility	Guide on Sustainable Overseas Silviculture by Chinese Enterprises	State Forestry Administration (SFA) and MOFCOM	27/08/2007	Put forward regulatory requirements forforest resource management, timber processing and transportation, personnel training and technical guidance, the establishment of multi–stakeholder consultation systems and the publicity of consulting results, as well as strengthening environmental protection and conservation of biodiversity and promoting local community development; aim to guide and regulate Chinese enterprises' overseas forest harvesting and timber processing businesses, to improve their code of conduct and ensure their sound management and utilization of overseas forest resources.	http://www.mofcom.gov.cn/aarticle/b/g/200712/20071205265858.html
	Guide on Sustainable Management and Utilization of Overseas Forest by Chinese Enterprises	SFA and MOFCOM	31/03/2009	To guide Chinese enterprises to rationally manage, utilize and protect overseas forest resources to play an active role for the sustainable development of global forest resources; to further regulate Chinese enterprises' business and behavior in the management and utilization of overseas forest with better self–discipline; to promote global legitimate forest resource utilization, sustainable management and related trade activities.	http://www.forestry.gov.cn/portal/main/s/224/content–401395.html

	Guidelines on Environmental Protection for Overseas Investment and Cooperation	MOFCOM and Ministry of Environmental Protection (MEP)	18/02/2013	To direct Chinese enterprises to better protect the environment while carrying out overseas investment and cooperation activities, and guide them to fulfill their social responsibilities in environmental protection to ensure sustainable development of China's foreign investment and cooperation.	http://www.zhb.gov.cn/gkml/hbb/gwy/201302/t20130228_248632.htm
	Notice on Further Regulating the Foreign Investment and Cooperation of Chinese Enterprises	MOFCOM, MFA and State-owned Assets Supervision and Administration Commission of the State Council (SASAC)	06/06/2008	Require enterprises investing abroad to learn and abide by local laws, act with integrity and fulfill social responsibilities. Any businesses breaking laws and regulations resulting in serious consequences will be dealt with and penalized by MOFCOM, MFA and SASAC in accordance with relevant regulations.	http://www.mofcom.gov.cn/aarticle/b/g/200808/20080805721680.html
	Provisions on Regulating Competitive Behavior in Foreign Investment and Cooperation	MOFCOM	18/03/2013	Stipulate the types of illegal competitive behaviors; require enterprises to abide by equality, fairness, honesty and not to conduct unfair competition to harm other enterprises' interest; require MOFCOM to oversee enterprises' competitive behaviors.	http://www.mofcom.gov.cn/article/h/redht/201303/20130300064019.shtml
	Tentative Measures for Bad Credit Records in Foreign Investment Cooperation and Foreign Trade Sectors	MOFCOM, MFA, etc.	05/07/2013	Require commerce departments at all levels to cooperate with departments in charge of foreign affairs, taxation, foreign exchange etc. to establish corresponding local mechanisms to collect and disseminate bad credit record information; require MOFCOM to summarize information from different regions, inform the Chinese embassies (consulates), and publish it onto the MOFCOM website to release to the public.	http://hzs.mofcom.gov.cn/article/aa/z/201309/20130900309355.shtml

	Green Credit Guidelines	China Banking Regulatory Commission (CRBC)	24/02/2012	Require banking institutions to strengthen environmental and social risk management of offshore projects they intend to grant credit to, and ensure the projects' initiators comply with the environmental, land, health and security laws in host countries. Overseas projects, which are to be granted credit, should adopt relevant international conventions or international standards, ensuring their operation meets with the standards of good international practices.	http://www.cbrc.gov.cn/chinese/home/docView/127DE230BC31468B9329EFB01AF78BD4.html
Central State-Owned Enterprises (SOE) Management	Guidelines on Post Project Evaluation of Central SOEs' Fixed Assets Investment	SASAC	02/06/2005	To guide post-project environmental and social impact assessment, mainly including: pollution control, regional environmental and ecological impact, environmental management and protection; increased employment opportunities, land acquisition compensation and resettlement of migrants, regional economic and social development drive, and industrial and technological progress. When necessary, analysis on interest groups of projects is required.	http://www.sasac.gov.cn/n1180/n1566/n258237/n259036/n259051/1578811.html
	Guiding Opinions about the Fulfilling of Social Responsibilities by Central SOEs	SASAC	29/12/2007	Stipulate general requirements, principles, main contents and measures for central SOEs to carry out corporation social responsibilities.	http://www.sasac.gov.cn/n1180/n1566/n259760/n264851/3621925.html

	Notice on Strengthening Administration over Foreign Investment Activities by Central SOEs	SASAC	31/12/2008	Require central enterprises to strengthen decision and risk management of overseas investment, increase awareness of social responsibility, and comply with SASAC' s overseas investment reporting system.	http://vip.chinalawinfo.com/newlaw2002/slc/slc.asp?db=chl&gid=121084
	Interim Measures for the Supervision and Administration of Overseas State-owned Assets of Central SOEs	SASAC	01/07/2011	Provide for the operation, supervision, management and performance appraisal as well as legal liability of overseas state-owned assets of central SOEs.	http://www.sasac.gov.cn/n1180/n1566/n11183/n11229/13624671.html
	Interim Measures for the Supervision and Administration of Overseas Investment of Central SOEs	SASAC	18/03/2012	Stipulate the approval and filing procedure for central SOEs investing overseas, develop overseas investment plans and related management systems; puts forward the five basic principles for overseas investment, including observing laws and regulations of the host country and respecting local customs.	http://www.sasac.gov.cn/n1180/n1566/n258237/n258899/14404719.html

Annex C Acronyms and Abbreviations

AIIB	*Asian Infrastructure Investment Bank*
ASEAN	*the Association of Southeast Asian Nations*
BOT	*Build – operate – transfer*
CCCMC	*Chinese Chamber of Commerce of Metals, Minerals and Chemicals Imports and Exports*
CDB	*China Development Bank*
CSO	*civil society organizations*
CSR	*corporate social responsibility*
DOIEC	*Department of Outward Investment and Economic Cooperation of MOFCOM*
DRC	*Development and Reform Commission*
FYP	*Five-Year Plan*
NDRC	*National Development and Reform Commission*
MFA	*Ministry of Foreign Affair*
MOFCOM	*Ministry of Commerce*
OFDI	*overseas foreign direct investment*
SAFE	*tate Administration of Foreign Exchange*
SASAC	*State-owned Assets Supervision and Administration Commission of the State Council*
SAT	*State Administration of Taxation*
SFA	*State Forestry Administration*
SINOSURE	*China Export & Credit Insurance Corporation*
SOE	*tate-owned enterprise*
WTO	*World Trade Organization*

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