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跨境贸易与投资 Cross-border Trade and Investment

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编者按：本刊旨在报道与中国有关的跨境贸易与投资的最新动态与我们的实务经验，但本刊不可替代个案的正式法律意见。若您重复收到本刊或者要订阅、退订或进一步了解本刊的内容，请与大成的有关律师联系。

Editor's note: the purpose of this publication is to report the most recent developments in the field of cross-border trade and investment in connection with China, as well as our practical experience therein. However, this publication should not be treated as a substitute for a formal legal opinion in individual cases. If you have received this publication more than once, or would like to subscribe or unsubscribe to this publication, or follow up on any issues raised in this publication, please be in contact with the lawyer you usually deal with at Dacheng Law Offices.

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立法新闻

LEGISLATIVE NEWS

- 发改委将出台试点方案简化境外投资程序（来源：www.cs.com.cn，2012 年 8 月 10 日）
NDRC to Promulgate Pilot Plan to Simplify the Procedure for Overseas Investment
(Source: www.cs.com.cn, August 10, 2012)

国家发改委有关负责人近日表示，将进一步简化境外投资项目管理程序。对于地方企业实施的中方投资额 3000 万美元以下资源开发类、中方投资额 1000 万美元以下的非资源开发类境外投资项目，今后实行表格制核准管理，不再要求企业提供项目申请报告。

Recently, the authoritative person of NDRC said that NDRC will further simplify the management procedure for overseas investment projects. With respect to an overseas investment project with the investment of less than USD30 million made by Chinese party (parties) for resource development or the investment of less than USD10 million made by Chinese party (parties) for non-resource development to be carried out by a local enterprise, the forms management of approval will be carried out from then on, and the enterprise will not be required to provide the project application report.

该负责人表示，去年 2 月发改委已将中方投资额 3 亿美元以下的资源开发类、1 亿美元以下的非资源开发类境外投资项目的核准权限下放至省级发展改革部门，中央企业实施的上述境外投资项目由企业自主决策并报发改委备案。

The said person revealed that since February last year, the NDRC had delegated the verification authority of the overseas investment project with investments that are less than USD300 million made by Chinese party (parties) for resource development or the investments that are less than USD100 million made by Chinese party (parties) for non-resource development to the development and reform departments at the provincial level. The said overseas investment projects to be carried out by central enterprises shall be subject to the discretion of the enterprises and shall be submitted to the NDRC for archival-filing.

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- 国家发改委发布《境外投资项目核准暂行管理办法》(征求意见稿)和《外商投资项目核准暂行管理办法》(征求意见稿) (来源：国家发改委网站，2012 年 8 月 17 日)

NDRC Promulgates the Interim Measures for the Administration of the Examination and Approval of Overseas Investment Projects (Draft for Comments) and the Interim Measures for the Administration of the Examination and Approval of Foreign Investment Projects (Draft for Comments) (Source: www.sdpc.gov.cn, August 17, 2012)

8 月 16 日，国家发展改革委利用外资和境外投资司发布了《境外投资项目核准暂行管理办法》(征求意见稿)和《外商投资项目核准暂行管理办法》(征求意见稿)，公开征求意见，意见反馈截止日期为 2012 年 9 月 15 日。

On August 16, the Department of Foreign Capital Utilization and Overseas Investment of the National Development and Reform Commission ("NDRC") promulgated the Interim Measures for the Administration of the Examination and Approval of Overseas Investment Projects (Draft for Comments) and the Interim Measures for the Administration of the Examination and Approval of Foreign Investment Projects (Draft for Comments) to seek public comments, and the closing date is on September 15, 2012.

外商投资方面，按照《外商投资产业指导目录》分类，总投资 3 亿美元及以上的鼓励类、允许类项目和总投资 5000 万美元及以上的限制类项目，由国家发展改革委核准项目申请报告。外国投资者并购境内企业项目涉及国家安全的，应当按照国家有关规定进行安全审查。办法强调，未经核准的外商投资项目，行业管理、国土资源、城乡

规划、质量监管、安全生产监管、工商、海关、税务、外汇管理等部门不得办理相关手续。

In respect of foreign investment, for an encouraged or permitted project whose total investment amounts to USD300 million or more, or a restricted project whose total investment amounts to USD50 million or more based on the Catalogue for the Guidance of Foreign Investment Industries, the project application report shall be examined and approved by the NDRC. In the event that a project of acquiring domestic enterprise by a foreign investor involves national security, security examination shall be carried out in accordance with the relevant national provisions. The Measures emphasize that the departments of industrial administration, land and resources administration, urban-rural planning, quality supervision, work safety supervision, industrial and commercial administration, customs, tax and foreign exchange control shall not process the foreign investment projects prior to their examination and approval.

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- 福建省发布《关于进一步落实鼓励和引导社会资本举办医疗机构实施细则的通知》(来源: 第一财经日报, 2012 年 8 月 24 日)

Fujian Province Promulgates the Circular on Further Carrying out the Implementing Rules on Encouraging and Guiding the Social Investment in Medical Institutions (Source: www.yicai.com, August 24, 2012)

福建省 21 日发布《关于进一步落实鼓励和引导社会资本举办医疗机构实施细则的通知》。《通知》指出, 社会资本可以按照经营目的, 自主申办营利性或非营利性医疗机构, 并可申请配置大型医疗设备。凡符合配置标准和使用资质的, 政府将不限制配置。福建社会资本今后可依法自主选择医疗服务投资领域, 凡法律法规未予限制的, 均允许进入; 其服务范围、诊疗科目、床位设置、技术准入等, 只要符合准入条件的均不受限制。

On August 21, Fujian province promulgated the Circular on Further Carrying out the Implementing Rules on Encouraging and Guiding the Social Investment in Medical Institutions. According to the Circular, social capital may apply for the establishment of non-profit or for-profit medical institutions at its own discretion according to its operation purposes, as well as for the installation of large medical equipment. The government shall not restrict the installation if the installation standards and utilization qualification requirements are fulfilled. In future, the social capital of Fujian may at its sole discretion invest in the field of medical services and may be allowed to enter into those not restricted by laws and regulations. Once the access conditions are met, their service scope, treatment items, bed arrangement and technical access shall not be restricted.

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- 商务部召开第 68 次部务会讨论审议《商务部关于涉及外商投资企业股权出资的暂行规定》等规章制度 (来源: 商务部, 2012 年 8 月 28 日)

Interim Provisions of the Ministry of Commerce on Equity Contributions to Foreign-invested Enterprises adopted (Source: Ministry of Commerce, August 28,

2012)

8月24日，商务部部长陈德铭主持召开第68次部务会议。会议听取并审议通过了《商务部关于涉及外商投资企业股权出资的暂行规定》、《机动车强制报废标准规定》和《单用途商业预付卡管理办法》（试行）和等规章制度。

The Minister of Commerce Chen Deming presided over the 68th ministerial meeting on August 24. The Interim Provisions of the Ministry of Commerce on Equity Contributions to Foreign-invested Enterprises, the Provisions on Mandatory Write-off Standards for Motor Vehicles, and the Measures for the Administration of Single-purpose Commercial Prepaid Cards (for Trial Implementation) were deliberated and adopted at the meeting.

会议指出，依据《公司法》及外商投资法律法规，制定《商务部关于涉及外商投资企业股权出资的暂行规定》，可以更好地适应外商直接投资发展的需要，提高投资便利化水平。该规定中对股权出资的定义、股权出资的条件、对股权出资的产业政策适用、股权出资的评估定价和审批权限、审批程序等作出了明确规定，为中外投资者以股权方式作为出资的行为提供操作规程和政策依据。

According to the Company Law as well as laws and regulations on foreign investment, formulation of the Interim Provisions of the Ministry of Commerce on Equity Contributions to Foreign-invested Enterprises may better fit in with the needs of foreign direct investment development and improve the investment facilitation level. The Provisions contain clear definition of equity contributions, conditions for equity contributions, industrial policies applicable to equity contributions, evaluation and pricing of equity contributions, as well as approval authority and approval procedures, which offer operating rules and policy basis for Chinese and foreign investors in making equity contributions.

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- 北京市商委发布《关于发布外商投资企业合同、章程格式化示范文本并开展审批、登记试点工作的通知》（来源：北京市商务委员会网站，2012年8月31日）

BJCOC Promulgates the Circular on Issuing the Sample Foreign-funded Enterprise Contracts and Articles of Association and Launching the Examination, Approval and Registration Pilot Program (Source: www.bjcoc.gov.cn, August 31, 2012)

8月20日，北京市商务委员会、市工商局联合发布了《关于发布外商投资企业合同、章程格式化示范文本并开展审批、登记试点工作的通知》。《通知》称，市商务委、市工商局联合制定了《外商独资公司章程》、《中外合资公司章程》、《中外合资公司合同》、《中外合作公司章程》、《中外合作公司合同》五种格式化示范文本，并将在市级和东城区、朝阳区、海淀区新设外商投资企业开展审批、登记试点工作。

On August 20, the Beijing Municipal Commission of Commerce ("BJCOC") and the Beijing Administration for Industry and Commerce ("BAIC") jointly promulgated the Circular on Issuing the Sample Foreign-funded Enterprise Contracts and Articles of Association and Launching the Examination, Approval and Registration Pilot Program. According to the Circular, the BJCOC and the BAIC have jointly formulated five samples, namely, the Articles of Association of Wholly Foreign-owned Company, the Articles of

Association of Sino-foreign Equity Joint Venture, the Sino-foreign Equity Joint Venture Contract, the Articles of Association of Sino-foreign Cooperative Joint Venture and the Sino-foreign Cooperative Joint Venture Contract, and will launch the examination, approval and registration pilot program for the foreign-funded enterprises newly established at municipal level or in Dongcheng District, Chaoyang District and Haidian District.

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INVESTMENT DEVELOPMENTS

- 商务部公告：限制性批准沃尔玛收购 1 号店股权（来源：商务部网站，2012 年 8 月 14 日）

MOFCOM Announcement: Conditional Approval for Wal-Mart's Stake Acquisition of The Yihaodian (Source: www.mofcom.gov.cn, August 14, 2012)

8 月 13 日，商务部发布《关于附加限制性条件批准沃尔玛公司收购纽海控股 33.6% 股权经营者集中反垄断审查决定的公告》（公告 2012 年第 49 号）。

On August 13, the Ministry of Commerce ("MOFCOM") promulgated the Announcement on Conditionally Approving Wal-Mart's Acquisition of 33.6% Stake of Niu Hai Holdings in the Decision of Anti-trust Examination on Concentration of Undertakings (Announcement [2012] No. 49).

商务部收到沃尔玛公司收购纽海控股有限公司 33.6% 股权的经营者集中反垄断申报。经审查，商务部决定附加限制性条件批准此项经营者集中。《公告》要求，沃尔玛公司应当履行如下义务：（一）纽海上海此次收购，仅限于利用自身网络平台直接从事商品销售的部分。（二）在未获得增值电信业务许可的情况下，纽海上海在此次收购后不得利用自身网络平台为其他交易方提供网络服务。（三）本次交易完成后，沃尔玛公司不得通过 VIE 架构从事目前由上海益实多电子商务有限公司（益实多）运营的增值电信业务。

The MOFCOM has received the application of anti-trust examination on concentration of undertakings for Wal-Mart's acquisition of 33.6% stake of Niu Hai Holdings, and decided to approve this concentration with additional restrictive conditions. According to the Announcement, Wal-Mart shall perform the following obligations: (1) The acquisition of Niu Hai Shanghai is limited to using its own network platform to sell products. (2) Without prior permission from value-added telecommunication business, Niu Hai Shanghai shall not utilize its own network platform to provide network services for other traders after such acquisition. (3) After completion of the transaction, Wal-Mart shall not engage in the value-added telecommunication business currently operated by Shanghai Yishiduo E-commerce Co., Ltd. ("Yishiduo") through VIE structure.

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- **中国利用外资同比下降 3% 房地产领域降幅最大（来源：新华网，2012 年 8 月 16 日）**
China's utilization of foreign capital down 3% year on year (Source: Xinhuanet.com, August 16, 2012)

2012 年 8 月 15 日，毕马威公布的中国经济全球化观察的报告显示，受国际经济环境影响，中国上半年利用外资 591 亿美元，同比下降 3%。值得关注的是，房地产领域降幅达 12.4%，明显高于利用外资其他领域的平均降幅。该报告还显示，2012 年上半年，外资境内并购共 259 起，比 2011 年的 262 起略减，披露金额的有 191 起，交易总额为 103.79 亿美元。金融服务是吸引投资金额最多的行业，披露金额近 29 亿美元，占交易总额的 28%。此外，高科技、房地产排位第二和第三，加上材料以及零售业，都是交易金额 10 亿美元以上的行业。

The report on China economy globalization observation issued by KPMG on August 15, 2012 shows that affected by the international economic environment, China utilized foreign capital amounting to USD 59.1 bn in the first half of 2012, down 3% year on year. It is noteworthy that the real estate sector dropped 12.4%, obviously higher than average drop in other sectors utilizing foreign capital. The report also shows that in the first half of 2012, there were a total of 259 domestic enterprise M&A cases involving foreign capital, slightly decreased compared with 262 cases in 2011, 191 cases disclosed the amounts, and the transaction value totaled to USD 10.379 bn. The financial service industry was the industry attracting most investment amounts, to nearly USD 2.9 bn as disclosed and accounting for 28% of total transaction value. In addition, high-tech and real estate respectively ranked second and third, both of which plus materials, retail trade achieved USD 1 bn or more transaction value.

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- **美亚财产保险公司获首张外资交强险牌照（来源：京报网，2012 年 8 月 22 日）**
Chartis Insurance to be the First Foreign Insurance Company to Obtain License for Compulsory Traffic Accident Liability Insurance (Source: www.bjd.com.cn, August 22, 2012)

8 月 20 日，国内最大的外资险企——美亚财产保险有限公司在官方网站上修改了经营范围，“包括机动车交通事故责任强制保险”。这是继今年 5 月交强险向外资开放以来，美亚保险可能成为第一个拿到外资交强险牌照的公司。

On August 20, Chartis Insurance, the largest foreign insurance enterprise in China, revised its business scope on its official website to include the "compulsory traffic accident liability insurance". Chartis may become the first foreign insurer to obtain the license for compulsory traffic accident liability insurance after China opened up the compulsory traffic accident liability insurance to foreign insurers in May, 2012.

业内人士表示，按照保监会的要求，外资开办交强险业务，在保监会国际部批准其提交的变更业务范围申请后，还需要向保监会财产险部提交经营交强险业务的资格申请，通过系统的审核和验收。

According to the insiders, as per the requirements of the China Insurance Regulatory Commission ("CIRC"), to launch the services of compulsory traffic accident liability insurance, a foreign insurer needs to first obtain the approval from the CIRC International Department to amend its business scope, thereafter it shall file a qualification application to operate compulsory traffic accident liability insurance business to the CIRC Property Insurance Regulatory Department and pass the examination and approval process.

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- 珠海市横琴新区工商局获省级外资登记权 外资在横琴投资更加便捷（来源：南方日报，2012年8月28日）

Hengqin New Area Administration for Industry and Commerce of Zhuhai Obtains the Provincial-level Authority of Foreign Investment Registration, Facilitating Foreign Investment in Hengqin (Source: www.nfdaily.cn, August 28, 2012)

8月21日获悉，珠海横琴新区工商局获得省一级外资登记管理权限，这是迄今为止全国国家级新区唯一获此权限的地方。

On August 21, the Hengqin New Area Administration for Industry and Commerce of Zhuhai obtained the provincial-level authority of foreign investment registration. It is the only national new area where such authority is granted in China so far.

根据批复文件，国家工商总局授予横琴工商局外商投资企业登记管理权，其登记范围为：一是辖区内由广东省人民政府、珠海市人民政府及其授权部门批准设立的外商投资企业、外商投资企业分支机构、外国企业常驻代表机构，以及批准从事承包工程、承包或受托经营管理等生产经营活动的外国企业；二是依法应当由国家工商总局登记管理而经其授权的。

According to the approval documents, the State Administration for Industry and Commerce ("SAIC") granted the authority of registration for foreign-invested enterprises to the Hengqin New Area Administration for Industry and Commerce with the scope as follows: (1) The foreign-invested enterprises, branches of foreign-invested enterprises and permanent representative organizations of foreign enterprises established under the approval of the People's Government of Guangdong Province, People's Government of Zhuhai Municipality and their authorized departments, as well as the foreign enterprises approved to engage in the production and operation activities, such as project contracting, and contracted or entrusted operation management; (2) The matters which have been authorized and shall be registered by the SAIC according to the law.

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大成律师事务所建立了覆盖全国、遍布世界重要地区和城市的大成全球法律服务网络。大成的总部设在北京，在中国境内的长春、长沙、常州、成都、重庆、福州、广州、哈尔滨、海口、杭州、呼和浩特、济南、昆明、南京、南宁、南通、青岛、上海、沈阳、深圳、太原、天津、武汉、乌鲁木齐、无锡、厦门、西安、西宁、银川、郑州、吉林、舟山、合肥、南昌、苏州、黄石、珠海等 37 个城市设有分所。

Dacheng Law Offices has built a global network of legal service covering China as well as the major regions and cities worldwide. With its head office based in Beijing, Dacheng has established branch offices in 37 Chinese cities, including Changchun, Changsha, Changzhou, Chengdu, Chongqing, Fuzhou, Guangzhou, Harbin, Haikou, Hangzhou, Hohhot, Jinan, Kunming, Nanjing, Nanning, Nantong, Qingdao, Shanghai, Shenyang, Shenzhen, Taiyuan, Tianjin, Wuhan, Urumqi, Wuxi, Xiamen, Xi'an, Xining, Yinchuan, Zhengzhou, Jilin, Zhoushan, Hefei, Nanchang, Suzhou, Huangshi and Zhuhai.

大成律师事务所在纽约、洛杉矶、芝加哥、巴黎、新加坡、香港、台湾设立了当地的大成律师事务所，可以为客户提供全面本地业务的法律服务。大成还吸收了 5 家外国律师事务所作为大成网络境外成员单位，并与 9 家外国律师事务所建立了长期稳定的战略合作伙伴关系。

Dacheng Law Offices has incorporated local Dacheng law firms in New York, Los Angeles, Chicago, Paris, Singapore, Hong Kong and Taiwan, which is qualified to render a full range of local legal services. Dacheng has 5 foreign associated firms in its oversea network and maintain long standing steady strategic partnership with another 9 foreign law firms.

2009 年，大成作为中国区唯一成员加入了世界最大的、汇集全球顶级律师事务所、会计师事务所、投资公司、金融机构等专业性服务企业和公司的独立专业服务组织 World Service Group (世界服务集团)，与 100 多个国家的律师事务所、8 万多名律师建立起了长期稳定的信息交换渠道和业务合作平台，将大成全球化法律服务网络与 WSG 全球网络实现了链接，使大成客户服务体系更广泛地覆盖全球，更有效地满足法律服务市场多样化、多层次的需求。

In 2009, Dacheng Law Offices joined the World Services Group (WSG) as its only member in China. WSG is the world's largest independent multidisciplinary professional service organization with members including professional service providers such as leading law firms, accounting firms, investment companies and financial institutions in the world, whereby Dacheng has established long term steady channel for exchanges, communications and cooperation with law firms and more than 80000 lawyers from more than 100 countries. Dacheng's global network of legal service is linked with WSG's global network through its membership, which launches Dacheng's client service system to the international arena and puts Dacheng into a better position to serve the diversified and comprehensive demands of the legal service market.