

# 中国法通讯 China Law Newsletter 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**

- 期货新条例为外资入市预留空间（来源：财新网，2012 年 11 月 6 日）  
**New Regulations on Futures Leave Room for Trading with Foreign Funds (Source: www.caixin.com, November 6, 2012)**

11 月 5 日，国务院公布《关于修改〈期货交易管理条例〉的决定》（《条例》），自 2012 年 12 月 1 日起施行。《条例》增加一项条款规定，符合条件条件的境外机构，可以在期货交易所从事特定品种的期货交易。但具体办法由国务院期货监督管理机构制定。对此国务院法制办、中国证监会负责人表示，这一条款的修改为适应推出原油期货的需要，为境外投资者直接进入期货交易所进行原油期货交易预留了空间。

On November 5, the State Council promulgated the Decision on Revising the Administrative Regulations on Futures Trading (the "Regulations"), effective as of December 1, 2012. A provision is added to the Regulations: qualified overseas institutions may engage in the trading of certain types of futures at futures exchanges, and the specific measures will be formulated by the futures regulators under the State Council. Officers from the Legislative Affairs Office of the State Council and the China Securities Regulatory Commission stated that the provision is added to meet the needs of promoting crude oil futures, reserving the room for overseas investors' direct entry into futures exchange for the trading of crude oil futures.

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- 两部门发文：鼓励以科技成果出资入股确认股权（来源：www.gov.cn，2012 年 11 月 19 日）  
**Two Authorities Encourage Technology To Be Used As Contribution (Source: www.gov.cn, November 19, 2012)**

证监会与科技部日前正式公布《关于支持科技成果出资入股确认股权的指导意见》，鼓励以科技成果出资入股确认股权，鼓励企业明确科技人员在科技成果中享有的权益；同时，在发行审核过程中，明确监管层将对科技成果形成的股权确认给予一定的便利措施。根据该指导意见，未来以科技成果出资入股的，包括科技成果在内的无形资产占注册资本的比例可达到 70%；鼓励企业明确科技人员在科技成果中享有的权益，依法确认股权。

The China Securities Regulatory Commission (CSRC) and Ministry of Science and Technology have formally issued the Guiding Opinions on Supporting Making Contributions and Investment in the form of Technology Achievement and Confirmation of Stock Rights (the Guiding Opinions), pursuant to which the two authorities encourage contributions to be made in the form of technology achievement and confirm the stock rights of tech-contributors. Enterprises are encouraged to clarify the interests owned by their technicians; in the meantime, regulators will take measures to facilitate the confirmation of shares contributed in the form of technology achievement in the process of issuance review. Under the Guiding Opinions, the ratio of intangible assets including the tech-contribution in the registered capital will be increased to 70%, and enterprises are urged to clarify technicians' equity rights in technology achievement and to confirm such equity rights.

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- 国家外汇管理局发布《国家外汇管理局关于进一步改进和调整直接投资外汇管理政策的通知》（来源：国家外汇管理局网站，2012 年 11 月 21 日）

**SAFE Promulgates the Circular on Improving and Adjusting the Policies for the Administration of Foreign Exchange Used in Direct Investment (Source: [www.safe.gov.cn](http://www.safe.gov.cn), November 21, 2012)**

11 月 19 日，国家外汇管理局发布《国家外汇管理局关于进一步改进和调整直接投资外汇管理政策的通知》（《通知》），自 12 月 17 日起实施。《通知》共取消了 35 项行政审核，简化合并了 14 项行政审核，取消外国投资者以其境内合法所得进行投资的有关核准手续，简化外商投资性公司境内再投资管理。《通知》取消直接投资相关账户开立、入账、结汇以及购付汇核准；取消直接投资常规业务的境内外汇划转核准；取消外国投资者境内合法所得再投资核准；取消减资验资询证；取消外商投资性公司境内再投资的外汇登记及验资询证。

On November 19, the State Administration of Foreign Exchange ("SAFE") promulgated the Circular of the SAFE on Improving and Adjusting the Policies for the Administration of Foreign Exchange Used in Direct Investment (the "Circular") which shall come into force as of December 17. According to the Circular, 35 administrative examination and approval items shall be cancelled, 14 administrative examination and approval items shall be simplified or combined, and the relevant procedures for examining and approving the investments of the foreign investors with their legal profits in domestic shall be cancelled, and the administration of domestic reinvestment of the foreign-funded investment companies shall be simplified. According to the Circular, the examination and approval of the opening, depositing, settlement and foreign exchange purchase and payment accounts related to direct investment shall be cancelled; the examination and approval of the

remission and appropriation of the foreign exchange concern with the regular businesses of direct investment in domestic be cancelled; the examination and approval of the reinvestment of the foreign investors with their legal profits in domestic be cancelled; the consultation and verification with regard to the capital decrease and verification be cancelled; the consultation and verification of the foreign exchange registration and capital verification related to the reinvestment of the foreign-funded investment companies in domestic be cancelled.

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- 国家外汇管理局发布《关于外商投资合伙企业外汇管理有关问题的通知》（来源：国家外汇管理局网站，2012 年 11 月 22 日）

**SAFE Promulgates the Circular on Issues concerning the Administration of Foreign Exchange of Foreign-invested Partnership Enterprises (Source: www.safe.gov.cn, November 22, 2012)**

日前，国家外汇管理局发布《国家外汇管理局关于外商投资合伙企业外汇管理有关问题的通知》（《通知》），自 2012 年 12 月 17 日起实施。《通知》主要包括以下内容：一是大幅简化管理流程，便利外商投资合伙企业投资。外商投资合伙企业所涉外汇管理以登记为主，外商投资合伙企业完成必要的外汇登记和出资确认手续后，可直接到银行办理外汇账户开立、资金购付汇等相关外汇业务。二是简化和规范外商投资合伙企业外汇登记和外汇账户管理。三是规范外国合伙人出资确认登记。外国投资者须在完成出资确认登记手续后，才能办理后续相关外汇业务。

Recently, the State Administration of Foreign Exchange ("SAFE") promulgated the Circular on Issues concerning the Administration of Foreign Exchange of Foreign-Invested Partnership Enterprises (the "Circular") which shall come into force as of December 17, 2012. The Circular mainly includes: (1) Considerably simplify the process of management to facilitate the investment of the foreign-invested partnership enterprises. The administration concerning the foreign exchange of the foreign-invested partnership enterprises mainly involves registration. After the foreign-invested partnership enterprises complete necessary procedures for foreign exchange registration and contribution identification, they may directly handle the relevant foreign exchange business, such as opening foreign exchange accounts and purchase and payment of foreign exchange by funds, with the banks. (2) Simplify and regulate the registration of foreign exchange and the administration of foreign exchange accounts of the foreign-invested investment partnership enterprises. (3) Standardize the registration of contribution identification for the foreign partners. The foreign investors may not handle the relevant foreign exchange business before they complete the procedures for registering the contribution identification.

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## 投资动态

## INVESTMENT DEVELOPMENTS

- 沃尔玛百货完成对中国电商 1 号店的股份增资（来源：商务部研究院信息咨询中心，2012 年 11 月 1 日）

**Wal-Mart Completes the Capital Increase for Chinese E-commerce Business Yihaodian (Source: Information Consultation Center of MOFCOM Institute, November 1, 2012)**

沃尔玛百货有限公司 30 日宣布已完成对发展迅速的中国电子商务网站 1 号店控股公司的增加投资，沃尔玛持有股份增至近 51%。沃尔玛的增资将有助于 1 号店的继续发展，也将使沃尔玛更好的通过电子商务来服务中国顾客。自 2008 年 7 月上线以来，1 号店一直和中国电子商务市场保持快速的发展。预计到 2016 年，中国的电子商务市场规模将和美国相当。

On October 30, Wal-Mart Stores, Inc. announced its completion of capital increase for the holding company of the fast-growing Yihaodian, a Chinese e-commerce website. The shares held by Wal-Mart have been increased to nearly 51 percent. Wal-Mart's capital increase will help the further development of Yihaodian and facilitate Wal-Mart to provide better services for Chinese customers through e-commerce. Since its launch in July 2008, Yihaodian develops at a fast pace as Chinese e-commerce market. It is estimated that the scale of Chinese e-commerce market will be comparable to that of the United States by 2016.

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- 商务部拟推光伏界赴非开发市场（来源：新华网，2012 年 11 月 23 日）

**Chinese PV enterprises to develop African market (Source: Xinhuanet.com, November 23, 2012)**

中国证券报记者从 11 月 22 日召开的“2012 年全球光伏产业领袖峰会--非洲专场”上了解到，商务部正在拟定政策，推动中国光伏企业远赴非洲 40 多个国家开发光伏发电市场。另悉，中央财政未来 3 年内将拿出 2 亿元用于气候变化国际合作，主要帮助非洲国家开展节能减排产品推广与能力建设方面合作。

At the China PV Summit 2012-Africa held on November 22, it is revealed that the Ministry of Commerce (MOFCOM) is drafting policies for pushing China's Photovoltaic (PV) enterprises to develop PV market in over 40 African countries. The Central Government will allocate 200 mn yuan in the next three years for international cooperation on climate change, which will be mainly used to help African countries promote energy saving and emission reduction products and build capabilities in that regard.

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- 外资 8 亿逆势进军国内白酒市场 茅台邻居获投资（来源：网易财经，2012 年 11 月 30 日）

**Foreign Investments Aimed at Domestic White Spirit Market against the Trends and a Neighbor of Maotai Gains Investments (Source: money.163.com, November 30, 2012)**

11 月 30 日从汇富资本获悉，该公司与香港风投机构软库金汇 8 亿投资国内高端

白酒市场，打造酱香型白酒。前期运作资金投入高达 2 亿元。若投资的酒业公司后期市场收益向好，计划未来 3 年将赴港上市。据悉，上述风投选取的对象恰好是位于知名的贵州茅台镇，王茅酒家族传人的王家酱酒，尽管当前这款名为王茅的酱香型白酒仍未在国内高端白酒市场全面铺开，前期资本运作已超一年多时间，吸引国际资本的相继进入。

On November 30, according to a source from Huifu Capital that the company and SBI E2-Capital, a Hong Kong-based venture capital investment institution, decided to invest CNY800 million in the domestic high-end white spirit market to produce Maotai-flavor white spirits. The investment for the initial stage of the operations reached CNY200 million. If the invested distillery has good market gains in the later stage, it is planned to be listed in Hong Kong market in the near three years. It was informed that the above venture capitals' target is located in Maotai Town of Guizhou, a town famous for its white spirits. WANGMAO, a Maotai-flavor white spirit produced by the descendant of Wang Mao Jiu Family, has not yet been sold throughout the domestic high-end white spirit market, but its initial capital operation has been conducted for more than one year and attracted international capital investments in succession.

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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、重庆、福州、广州、哈尔滨、海口、杭州、合肥、黄石、吉林、济南、昆明、南昌、南京、南宁、南通、内蒙古、宁波、青岛、上海、沈阳、深圳、四川、苏州、太原、天津、温州、武汉、乌鲁木齐、无锡、厦门、西安、西宁、银川、郑州、舟山、珠海等 39 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 39 Chinese cities, including Changchun, Changsha, Changzhou, Chongqing, Fuzhou, Guangzhou, Harbin, Haikou, Hangzhou, Hefei, Huangshi, Jilin, Jinan, Kunming, Nanchang, Nanjing, Nanning, Nantong, Inner Mongolia, Ningbo, Qingdao, Shanghai, Shenyang, Shenzhen, Sichuan, Suzhou, Taiyuan, Tianjin, Wenzhou, Wuhan, Urumqi, Wuxi, Xiamen, Xi'an, Xining, Yinchuan, Zhengzhou, Zhoushan, 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 and 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.