

# 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：本刊旨在报道中国法下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 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**

- 商务部印发《境外中资企业机构和人员安全管理指南》（来源：商务部网站，2012 年 2 月 13 日）

**MOFCOM Issues the “Guidelines on Safety Administration of Overseas Chinese-invested Enterprises, Institutions and Their Personnel” (source: www.mofcom.gov.cn, 13 February 2012)**

商务部日前发布了《境外中资企业机构和人员安全管理指南》（《指南》），要求企业针对海外经营的地区分布、所在行业、业务类型的不同特点，参照《指南》建立并完善本企业的境外安全管理体系和相关管理制度。

The Ministry of Commerce (“MOFCOM”) has recently released the “Guidelines on Safety Administration of Overseas Chinese-invested Enterprises, institutions and their Personnel” (“Guidelines”), requiring enterprises to refer to the Guidelines to establish and improve their own offshore safety management system and associated management systems according to the different characteristics of distribution areas, industry, type of business of overseas operations.

《指南》全面介绍了企业境外安全风险管理的原则、目标和流程，重点关注社会公共安全风险，兼顾企业海外业务中常见的经营风险，旨在指导企业科学建立境外安全风险管理体系，有效规避、控制、转移和分散风险。

The Guidelines comprehensively introduce the principles, objectives and process of enterprise offshore security risk management, focus on social and public safety risk, at the same time, take into account the common operation risks in the corporate overseas business in order to guide enterprises to scientifically establish offshore safety risk management system to effectively avoid, control, transfer and diversify risk.

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- 北京市政府征求《关于进一步鼓励和引导社会资本举办医疗机构的若干政策（征求意见稿）》修改意见（来源：北京市人民政府，2012 年 2 月 13 日）

**The Beijing Municipal People’s Government solicits comments on the revision of Several Policies Aimed to Further Encourage and Guide Private Capital in Establishing Medical Institutions (for comment) (source: Beijing Municipal People’s Government, 13 February 2012)**

2012 年 2 月 9 日，北京市人民政府人民建议征集办公室发布公告，征求《关于进一步鼓励和引导社会资本举办医疗机构的若干政策（征求意见稿）》修改意见，意见征集截止时间为 2 月 15 日。该意见稿明确支持民办医疗机构实施品牌发展战略，发展连锁化运营和大型医疗集团，并要求市区两级有关部门强化服务意识，监护审批程序。该意见稿还提出，有关部门对各类医疗机构将实行统一的审批标准，社会办医疗机构均可申请城镇基本医疗保险、新型农村合作医疗、医疗救助、工伤保险等社会保障定点服务资质。

The Office for Soliciting Public Opinions under the Beijing Municipal People's Government issued an announcement on February 9, 2012, soliciting comments on the revision of Several Policies Aimed to Further Encourage and Guide Private Capital in Establishing Medical Institutions (for comment) by February 15, 2012, the stipulated deadline. The announced Several Policies expressly support private medical institutions in implementing branding strategy, developing chain operations and forming large scale medical groups. It also requests the relevant governmental agencies at the district and municipal level to strengthen its service orientation and safeguard the review and approval process, and to implement uniform review and approval criteria towards all types of medical institutions, and private medical institutions may apply for designated social security service agency qualification for provision of urban and rural basic medical insurance, new rural cooperative medical service, medical aid, and work-related insurance etc.

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- 国台办：大陆多个省市出台政策帮扶台资企业发展（来源：新华网，2012年2月16日）

**Taiwan Affairs Office of the State Council: Many Provinces and Municipalities in Mainland China Issue Policies to Support the Development of Taiwan-funded Enterprises (source: www.xinhua.org, 16 February 2012)**

国台办发言人范丽青15日在例行发布会上表示，自去年下半年以来，辽宁、江苏、上海、浙江、安徽、福建、江西、山东、河南、湖北、广东等11个台资企业比较集中的省市相继出台了鼓励和支持台资企业发展的政策措施。

Fan Liqing, spokeswoman of the Taiwan Affairs Office of the State Council, said at a routine news press that 11 provinces and municipalities concentrated with Taiwan-funded enterprises, namely, Liaoning, Jiangsu, Shanghai, Zhejiang, Anhui, Fujian, Jiangxi, Shandong, Henan, Hubei and Guangdong had issued policies and measures to encourage and support the development of Taiwan-funded enterprises.

福建省今年1月15日出台了《福建省人民政府关于进一步促进台资企业发展若干意见》，从“加大财政扶持”“推动技术创新和技术改造”“支持拓展大陆市场”“优化劳动用工服务”“加强金融支持”和“优化投资环境”6个方面提出35条措施。

Fujian Province issued the Several Opinions of Fujian People's Government on Further Promoting the Development of Taiwan-funded Enterprises, putting forward 35 measures in 6 aspects, namely, to reinforce financial support, to promote technical innovation and technical transformation, to encourage the exploration of mainland market, to improve labor services, to provide more financing support and to optimize investment environment.

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- 保监会调整外资保险公司部分行政许可项目有关事项（来源：中国保监会网站，2012年2月17日）

**CIRC Adjusts Issues relating to Part of the Administrative Licensing Items of Foreign Insurance Companies (source: www.circ.gov.cn, 17 February 2012)**

2月16日,中国保险监督管理委员会发布了《关于调整外资保险公司部分行政许可项目有关事项的通知》(《通知》),自下发之日起实施。

On February 16, the China Insurance Regulatory Commission (“CIRC”) issued the “Circular on Issues Relating to the Adjustment of Part of Administrative Licensing Items of Foreign Insurance Companies” (the “Circular”), which shall come into force as of the date of promulgation.

《通知》决定调整外资保险公司部分行政许可项目的有关办理事项,以下行政许可可由各相关保监局办理:外资保险公司分支机构变更营业场所审批;外资保险公司分公司以下分支机构(不含分公司)筹建审批;外资保险公司分公司以下分支机构(不含分公司)开业核准;外资保险公司分公司以下分支机构(不含分公司)高级管理人员任职资格核准。

The Circular decides to adjust matters relating to handling part of the administrative licensing items of foreign insurance companies, the following administrative licenses may be handled by the relevant insurance regulatory bureaus: examination and approval for change of place of business of branches of foreign insurance companies; examination and approval for preparation for the establishment of sub-branches (excluding branches) of branches of foreign insurance companies; approval for the business commencement of sub-branches (excluding branches) of branches of foreign insurance companies; approval for senior management qualification of sub-branches (excluding branches) of branches of foreign insurance companies.

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- 国税总局反避税重点盯上跨国公司(来源:上海证券报,2012年2月27日)  
**SAT to combat tax avoidance of multinational corporations (source: Shanghai Securities News, 27 February 2012)**

据上海证券报2012年2月25日消息,目前,税务部门已出台《特别纳税调整内部工作规程(试行)》和《特别纳税调整重大案件会审工作规程(试行)》,对各级国税机关对企业的关联申报管理、同期资料管理以及各种特别纳税调整事项的立案、调查、结案和跟踪管理等内部事项,都进行了规范。两项规程将从今年3月份开始实施。下一步,国税总局将进一步细化受控外国企业管理、一般反避税管理以及避税港避税的具体操作程序和相应职责等内容,并将强化各级机关的关联申报审核、同期资料管理,做好反避税基础工作,落实行业联查和集团联查,深化反避税调查。

The taxation authorities have promulgated the Internal Operating Procedures for Special Tax Adjustments (for Trial) and the Operating Procedures for Joint Hearing of Major Cases Concerning Special Tax Adjustments (for Trial) to regulate the internal matters, conducted by State taxation authorities at all levels, such as the management of enterprises' related-party reporting and CPT documentation, acceptance, investigation, conclusion and tracking management of various special tax adjustments, etc. Both of the two operating procedures will take effect in March 2012. Next, the State Administration of Taxation (SAT) will further detail the management of foreign enterprises under control, general anti-tax avoidance administration as well as specific operating procedures and corresponding

responsibilities of tax avoidance in tax havens, strengthen the examination and approval of related-party reporting and CPT documentation management by authorities of all levels, do well the foundation work for anti-tax avoidance, implement joint investigation among both industries and groups, and deepen anti-tax avoidance investigation.

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## **投资动态**

### **INVESTMENT DEVELOPMENTS**

- 上海浦东新区 2012 年招商引资目标锁定 1378 亿元（来源：上海市人民政府，2012 年 2 月 1 日）

**Pudong targets to attract investment of RMB 137.8 bn in 2012 (source: People's Government of Shanghai Municipality, 1 February 2012)**

上海市人民政府网站 2 月 1 日消息，浦东商务委表示，2012 年该区内外资招商目标锁定 1378 亿元，力争比去年增长 7%左右。2012 年，新区仍将力争吸引合同外资 60 亿美元，实到外资 42 亿美元；吸引内资注册资本 1000 亿元人民币（含新设和增资项目）；全年引进外资跨国公司地区总部 15 至 20 家，引进国内大企业总部 5 家，引进内外资区域性总部 10 家。

According to information of the website of Shanghai Municipal Government on February 1, Pudong New Area Commission of Commerce disclosed that Pudong targets to attract investment of RMB 137.8 bn in 2012, up about 7% year on year. In 2012, Pudong will endeavor to attract contracted amount of foreign capital of USD 6 bn and the actually paid-up foreign capital of USD 4.2 bn, absorb domestic registered capital of RMB 100 bn (including newly established projects and projects with capital increase), and introduce 15 to 20 regional headquarters of foreign multinationals, 5 headquarters of large domestic enterprises and 10 regional headquarters of foreign and domestic enterprises.

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- 2011 年中国吸收外国投资同比增 8.1%（来源：中国外汇网，2012 年 2 月 9 日）  
**FDI inflows of China grew 8.1% in 2011 (source: ChinaForex.com.cn, 9 February 2012)**

中国外汇网 2 月 8 日转引新华网消息，日前，联合国贸易和发展会议（United Nations Conference）发布报告称，2011 年全球外商直接投资（FDI）总计较 2010 年增长 17%，达到 1.5 万亿美元。中国则是全球第二大吸收全球 FDI 的国家，2011 年吸收 FDI 总额达到 1240 亿美元，比 2010 年上涨 8.1%。而流入香港的 FDI 为 784 亿美元。该报指出，整个大中华区的 FDI 比美国仅少 80 亿美元。

Recently, the United Nations Conference on Trade and Development (UNCTAD) published a report, pointing out that the world's foreign direct investment (FDI) reached

USD 1.5 trn in 2011, up 17% year on year. China, which ranked 2nd in the world in terms of FDI inflows, attracted USD 124 bn of FDI in 2011, up 8.1% year on year. The FDI inflows of Hong Kong amounted to USD 78.4 bn. The report also stated that the amount of FDI inflows of the Greater China was only USD 8 bn than that of America.

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- 国企在对外投资过程中表现不佳（来源：安邦信息，2012 年 2 月 13 日）

**State-owned enterprises perform poorly in offshore investment (source: Anbound Information, 13 February 2012)**

在国家的“走出去”战略号召之下，很多国企都有在海外投资，但是拂去表面的这层热情来看，实际获利的企业并不多，这其中存在着不少问题。2004 年以来中国共有 14 家企业在海外发生巨额亏损，14 个项目累计亏损达 950.5 亿元。商务部公布的最新统计数字显示，中国目前已经在全球 177 个国家、地区境外投资企业 13000 家，对外投资积累达到 2457 亿美元。2010 年上半年中国作为收购方的并购交易额，排在美国之后，居全球第二位。中国企业对外投资热情高涨，与此相应的是海外投资的频频失败，这些巨额亏损的企业往往是大中型国有企业。

Answering to the calls of the national government for “Going-out”, many a state-owned enterprise made offshore investments, however, setting aside the surface enthusiasm, few state-owned enterprises actually profited from their offshore ventures, which uncovers quite some problems. Since 2004, 14 Chinese companies suffered staggering losses in their overseas ventures, totaling RMB 95.05 billion in cumulative losses. According to the recent statistics released by the Ministry of Commerce, 13000 Chinese companies have ventured abroad with a cumulative total of USD 245.7 billion in investments in 177 countries and regions. In the first half of 2010, China ranked second, after the U.S., by the value of M&A deals in which Chinese enterprises acted as the acquirer. Chinese companies are effusively enthusiastic in offshore investment, although there are frequent failures in such ventures, and the most staggering of which more often than not involved mid-sized and large state-owned enterprises.

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- 北京市外企投资规模同比增 18.83%（来源：北京市人民政府，2012 年 2 月 15 日）

**Total investment of newly established FIEs in Beijing grows 18.83% in 2011 (source: People's Government of Beijing Municipality, 15 February 2012)**

2012 年 2 月 13 日，来自北京市工商局的统计数据表明，2011 年，北京市外商投资企业户数略有下降，但投资规模不降反增，新设外商投资企业平均规模增大。2011 年北京市新设立外商投资企业 2922 户，同比下降 7.12%，但新设企业投资总额 56.67 亿美元，增长 18.83%。截至 2011 年年底，香港地区在京设立企业数量和投资规模均位居第一，日资企业投资大幅增加。从 2011 年新设企业外方注册资本来看，前五名的地区和国家依次为香港、德国、日本、美国、新加坡。

According to data released by Beijing Municipal Administration for Industry and Commerce on February 13, in 2011, the number of foreign-invested enterprises (FIEs) in Beijing was slightly decreased, while the investment scale was increased and the average

scale of newly established FIEs saw increase. In 2011, the number of newly established FIEs totaled 2,922, down 7.12% year on year, while the total investment of newly established FIEs amounted to USD 5.667 bn, up 18.83% year on year. By the end of 2011, both the number and investment scale of enterprises established in Beijing by enterprises from Hong Kong ranked the first, and the investment made by Japanese enterprises was massively increased. In terms of registered capital contributed by foreign investors of newly established FIEs in 2011, the regions and countries ranking top five were Hong Kong, Germany, Japan, America, and Singapore.

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- 国家发改委召开会议推动鼓励和引导民间投资实施细则落实工作（来源：国家发展和改革委员会，2012 年 2 月 22 日）

**NDRC pushes forward the implementation of rules for encouraging and guiding private investment (source: National Development and Reform Commission, 22 February 2012)**

2012 年 2 月 21 日，国家发改委召开由 45 个部门参加的会议，落实国务院关于 2012 年上半年出台鼓励和引导民间投资健康发展相关实施细则的工作要求。会议要求：研究制定工作计划、倒排时间表，确保按时完成任务。在会上，国家发改委主任张平传达了温家宝总理有关重要指示，通报了民间投资发展实施细则制定工作的总体进展情况，强调落实工作的重要性和紧迫性，并提出了具体工作要求。

On February 21, 2012, the National Development and Reform Commission (NDRC) held a meeting, at which 45 departments attended, to implement the work requirements for the relevant detailed implementing rules for encouraging and guiding healthy development of private investment which are to be released by the State Council in the first half of 2012. At the meeting, it is required to discuss and formulate work plans, and arrange the schedule to ensure timely completion of tasks. In addition, the NDRC Director Zhang Ping conveyed the important instructions of Premier Wen Jiabao, briefed the progress of formulating the detailed implementing rules for private investment development, emphasized the importance and urgency of the implementation, and put forward specific work requirements.

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- 上海对外投资合作国家地区已达 102 个（来源：中国人民银行上海总部，2012 年 2 月 27 日）

**Shanghai makes ODI in 102 countries or regions (source: Shanghai Head Office of the People's Bank of China, 27 February 2012)**

2012 年 2 月 22 日，上海市举行“走出去”信息服务平台开通仪式。据介绍，2011 年上海“走出去”工作创下新签境外工程承包合同额、完成核准对外直接投资总额等多项历史新高。截至目前，上海对外投资合作的国家、地区已达 102 个，2011 年上海企业对外投资收购兼并项目 24 个，总金额 10.7 亿美元，占全市投资额的 40%。

Shanghai held the launching ceremony of the “going global” information service platform on February 22, 2012. In 2011, Shanghai's newly signed overseas contracting

value and the total amount of outbound direct investment (“ODI”) already approved under the “going global” program hit new records. By far, Shanghai has made ODI in 102 countries or regions. In 2011, the number of overseas acquisition and merger projects of Shanghai enterprises reached 24, with a total value of USD 1.07 bn, accounting for 40% of Shanghai's total investment.

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## **热点追踪** **HOT TOPICS**

- 沪上首家外资小贷公司获批（来源：商务部研究院信息咨询中心，2012 年 2 月 14 日）  
**First Foreign-Funded Small-Loan Company in Shanghai Gets Approved (source: Information Consultation Center of MOFCOM Institute, 14 February 2012)**

上海市金融办副主任范永进日前表示，上海鼓励外资、外地各类资本在上海设立小额贷款公司已取得实质性进展，上海首个外资小贷公司已获批。

Mr. Fan Yongjin, deputy director of Shanghai Financial Service Office, has recently said that Shanghai has made substantial progress in encouraging foreign funds and various non-local capitals to set up small-loan companies in Shanghai and the first foreign-funded small-loan company in Shanghai has been approved.

亚洲联合财务公司作为主要出资人设立的小额贷款公司将落户浦东新区，注册资本为 2 亿元，其中，亚洲联合财务公司持有其 70% 的股份。公开资料显示，亚洲联合财务有限公司是香港最大的以小贷业务为主的财务公司，成立于 1991 年，为新鸿基有限公司成员之一。2011 年，亚洲联合财务有限公司已在内地包括深圳、沈阳、重庆、天津、成都、云南、大连、北京七个城市开小额贷款公司，网点达到数十家。

A small-loan company with United Asia Finance Limited as the main contributor will be settled in Pudong New Area, with registered capital of CNY200 million and United Asia Finance Limited holding 70% stake. Public information has shown that established in 1991, United Asia Finance Limited is the largest finance company with small-loan business as the main part and is a member of Sun Hung Kai & Co. Limited. In 2011, United Asia Finance Limited opened small-loan companies in seven cities including Shenzhen, Shenyang, Chongqing, Tianjin, Chengdu, Yunnan, Dalian and Beijing, with outlets reaching dozens.

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- 中美达成多项经贸共识中国交强险向外资开放（来源：上海证券报，2012 年 2 月 16 日）  
**China, US issued the Joint Fact Sheet on Strengthening Sino-US Economic Relations (source: Shanghai Securities News, 16 February 2012)**

2012 年 2 月 14 日，国家副主席习近平会见美国总统奥巴马后，按商定，中美双方发布了中美战略与经济对话框架下经济对话议定的《关于加强中美经济关系的联合情况说明》。中美双方重申落实二十国集团有关峰会承诺，加快推进由市场决定的汇率制度，增强汇率灵活性以反映经济基本面，避免汇率的持续失调和货币竞争性贬值。双方决心依据促进增长和就业行动计划中关于汇率改革的承诺采取行动，以解决短期脆弱性问题，恢复金融稳定，巩固中期增长基础。这些行动将有助于解决全球流动性和资本流动波动带来的挑战，从而进一步促进汇率改革并降低外汇储备的过度积累。此外，中方已决定对外资保险公司开放交强险，在完成修改相关法规等程序后，将正式颁布实施。

On February 14, 2012, Chinese Vice President Xi Jinping met with U.S. President Barack Obama. According to agreed, the two sides issued the Joint Fact Sheet on Strengthening Sino-US Economic Relations (Joint Fact Sheet) under the framework of the Economic Track of the Sino-US Strategic and Economic Dialogue. The Joint Fact Sheet states that “China and the United States reaffirm our G-20 commitment to move more rapidly toward more market-determined exchange rate systems and enhance exchange rate flexibility to reflect underlying economic fundamentals, avoid persistent exchange rate misalignments, and refrain from competitive devaluation of currencies. We are determined to act on our commitments to exchange rate reform articulated in our Action plan for Growth and Jobs to address short term vulnerabilities and restoring financial stability and strengthen the medium-term foundations for growth. Our actions will help address the challenges created by developments in global liquidity and capital flows volatility, thus facilitating further progress on exchange rate reforms and reducing excessive accumulation of reserves.” Besides, China has decided to open up the Mandatory Third-Party Liability Insurance for motor vehicles to foreign-invested insurance companies. Relevant policy will be promulgated and implemented upon the completion of the amendment procedures of relevant regulations.

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