

中国法通讯 China Law Newsletter 跨境贸易与投资 Cross-border Trade and Investment

第15期 • Issue 15
2012年10月 • October 2012

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.

目录 CONTENTS

立法新闻 LEGISLATIVE NEWS [4]

[\[1\]](#) 商务部发布《商务部关于对外劳务合作经营资格管理有关工作的函》

MOFCOM Promulgates the Letter on the Administration of the Operation Qualifications of Foreign Labor Service Cooperation

[\[2\]](#) 江苏出台优惠政策吸引跨国公司地区总部入驻

Jiangsu Province Promulgates Preferential Policies to Encourage the Entry of Regional Headquarters of MNCs

[\[3\]](#) 中国与智利签署《自由贸易协定中关于投资的补充协定》

China and Chile Sign the Supplementary Agreement to the Free Trade Agreement on Investment Provisions

[\[4\]](#) 南京市政府出台《保护服务台商在宁投资和促进双向投资的意见》

Nanjing Municipal Government Promulgates the Opinions on Protecting and Serving Taiwanese Investors in Nanjing and Promoting Bilateral Investment

投资动态 INVESTMENT DEVELOPMENTS [5]

[5] 中国将引导符合条件外企境内上市

China to guide qualified foreign investment companies to be listed domestically

[6] 广东省原则通过《推动率先基本实现粤港澳服务贸易自由化行动计划》

Guangdong Province Adopts the Action Plan for Leading the Service Trade Liberalization among Guangdong, Hong Kong and Macao

[7] 广药资产重组获商务部反垄断审查通过、拟购买资产评估结果或国资委核准和备案

Guangzhou Pharmaceuticals Passes MOFCOM's Antitrust Review In Assets Restructuring

[8] 深圳将出台前海外商投资优惠政策

Shenzhen to Promulgate Preferential Policies on Foreign Investment in Qianhai

[9] 全球小家电巨头飞利浦收购奔腾电器

Global Domestic Appliances Giant PHILIPS Acquires POVOS

立法新闻 **LEGISLATIVE NEWS**

- 商务部发布《商务部关于对外劳务合作经营资格管理有关工作的函》（来源：商务部网站，2012 年 9 月 3 日）

MOFCOM Promulgates the Letter on the Administration of the Operation Qualifications of Foreign Labor Service Cooperation (Source: www.mofcom.gov.cn, September 3, 2012)

8 月 16 日，商务部发布《商务部关于对外劳务合作经营资格管理有关工作的函》。《对外劳务合作管理条例》（《条例》）自 2012 年 8 月 1 日起施行。根据《条例》，企业从事对外劳务合作，应当按照省、自治区、直辖市人民政府的规定，经省级或者设区的市级人民政府商务主管部门批准，取得对外劳务合作经营资格。《条例》施行前已取得对外劳务合作经营资格的企业，应在 2013 年对外劳务合作经营资格证书年审工作结束（2013 年 4 月 30 日）前，达到本地区对外劳务合作经营资格条件。逾期达

不到规定条件的企业，不得继续从事对外劳务合作。

On August 16, the Ministry of Commerce ("MOFCOM") promulgated the Letter of the Ministry of Commerce on the Administration of the Operation Qualifications of Foreign Labor Service Cooperation. The Administrative Regulations on Foreign Labor Service Cooperation (the "Regulations") took effect on August 1, 2012. According to the Regulations, to develop foreign labor service cooperation, an enterprise shall be approved by the commercial authority under the people's government at provincial level or of the city where districts are designated by the provisions of the people's government of the province, autonomous region or municipality directly under the Central Government to be qualified to develop foreign labor service cooperative operation. An enterprise which has obtained the qualification of foreign labor service cooperative operation before the enforcement of the Regulations shall meet the conditions for qualified foreign labor service cooperative operation before the completion of the annual review of the qualification certificate of foreign labor service cooperative operation in 2013 (April 30, 2013). The enterprise that fails to meet the conditions within the time limit shall not be allowed to remain in foreign labor service cooperation.

[Top](#)

- 江苏出台优惠政策吸引跨国公司地区总部入驻（来源：中国江苏网，2012 年 9 月 4 日）

Jiangsu Province Promulgates Preferential Policies to Encourage the Entry of Regional Headquarters of MNCs (Source: www.jschina.com.cn, September 4, 2012)

2012 年 8 月，江苏省正式实施《关于鼓励跨国公司在江苏省设立地区总部和功能性机构的意见》。《意见》提出，将对跨国公司地区总部和功能性机构分别给予 500 万和 100 万的补助；用房补助方面，对总部企业租赁或购建办公用房将按年租金 30% 的标准连续补助三年；经营奖励方面，鼓励总部企业做大做强，对其营收增量按 1 亿、5 亿、10 亿元三档分别给予 100 万、500 万、1000 万元的奖励；高管奖励，则对每年评选出的总部企业对企业江苏发展贡献突出的高级管理人员予以奖励。

In August 2012, Jiangsu province officially implemented the Opinions on Encouraging MNCs to Establish Regional Headquarters and Functional Organizations in Jiangsu Province. The Opinions point out that regional headquarters and functional organizations of multinational corporations (MNCs) will be granted the subsidies of CNY5 million and CNY1 million respectively. For housing subsidies, the office buildings leased, purchased or constructed by headquarters enterprises will be subsidized for three consecutive years with 30 percent annual rent. For operational incentives, headquarters enterprises are encouraged to become larger and stronger, and the incentives of three grades, namely, CNY1 million, CNY5 million and CNY10 million will be granted to the enterprise whose operating revenue amounts to CNY100 million, CNY500 million and CNY1 billion respectively. For executive incentives, the executives from the annually-elected headquarters enterprises, who have made outstanding contribution to the development of their enterprises in Jiangsu will be granted the incentives.

[Top](#)

- 中国与智利签署《自由贸易协定中关于投资的补充协定》（来源：商务部网站，2012 年 9 月 10 日）

China and Chile Sign the Supplementary Agreement to the Free Trade Agreement on Investment Provisions (Source: www.mofcom.gov.cn, September 10, 2012)

9 月 9 日，中国商务部部长与智利外长签署了《中华人民共和国政府与智利共和国政府自由贸易协定中关于投资的补充协定》（《协定》）。缔约双方同意 1994 年 3 月 23 日签署的《中华人民共和国政府和智利共和国政府关于鼓励和相互保护投资协定》在本《协定》生效之日终止。《协定》共包括 33 条规定及 4 个附件，主要包括投资和待遇的实体规定和有关争端解决的程序性规定两部分内容。4 个附件包括征收、转移、公债、终止《中智双边投资协定》等内容。

On September 9, Minister of the Ministry of Commerce ("MOFCOM") and the Minister of Foreign Affairs of Chile signed the Supplementary Agreement to the Free Trade Agreement on Investment Provisions between the Government of the People's Republic of China and the Government of the Republic of Chile (the "Agreement"). Upon the date this Agreement take effect, both parties agree to terminate the Agreement between the Government of the People's Republic of China and the Government of the Republic of Chile on the Encouragement and Mutual Protection of Investment dated March 23, 1994. The Agreement includes 33 provisions and 4 appendices, mainly in two aspects, namely, the substantive provisions on investment and treatment, as well as the procedures of relevant dispute resolution. The 4 appendices are made in respect of taxation, transfer, government bonds and the termination of the Investment Agreement between China and Chile.

[Top](#)

- 南京市政府出台《保护服务台商在宁投资和促进双向投资的意见》（来源：南京市政府网站，2012 年 9 月 20 日）

Nanjing Municipal Government Promulgates the Opinions on Protecting and Serving Taiwanese Investors in Nanjing and Promoting Bilateral Investment (Source: www.nanjing.gov.cn, September 20, 2012)

9 月 19 日，南京市政府出台《保护服务台商在宁投资和促进双向投资的意见》（《意见》）。《意见》从给予公平的投资待遇、鼓励和支持投资高新技术和新兴战略性新兴产业、鼓励和支持投资现代服务业、鼓励和支持金融合作、鼓励和支持参与南京综合保税区建设、鼓励拓展大陆市场、鼓励高端人才创业、鼓励和支持南京企业入岛投资、保障台商投资安全、提供良好的生活服务等 10 个方面给出了指导性政策。

On September 19, Nanjing municipal government promulgated the Opinions on Protecting and Serving Taiwanese Investors in Nanjing and Promoting Bilateral Investment (the "Opinions"). The Opinions provide guiding policies in ten aspects, including the equal investment opportunities, the encouragement and support of financial cooperation, the participation in the development of Nanjing comprehensive bonded zone and the investment in high-tech and emerging strategic industries and modern services industries, the encouragement of developing the Mainland market, starting new businesses by senior professionals, investments in Taiwan by Nanjing-based enterprises and guaranteeing the

security of Taiwan investment, as well as the supply of good living services.

[Top](#)

投资动态

INVESTMENT DEVELOPMENTS

- 中国将引导符合条件外企境内上市（来源：上海证券报，2012 年 9 月 10 日）
China to guide qualified foreign investment companies to be listed domestically
(Source: Shanghai Securities News, September 10, 2012)

9 月 8 日，国务委员兼国务院秘书长马凯在厦门出席 2012 国际投资论坛时强调，中国将奉行更加积极主动和互利共赢的开放战略，进一步提升国际投资合作水平。

Ma Kai, the State Councilor and the Secretary-General of the State Council, emphasized recently at 2012 International Investment Forum that China will implement a more active and reciprocal opening-up strategy, and further improve the level of cooperation on international investment.

马凯指出，中国将拓展开放新领域，发掘合作新空间，为国内外企业投资合作和创新发展营造良好环境。鼓励沿海地区外商投资企业向中西部地区转移，着力提高中西部地区的对外开放水平。创新投资方式，鼓励外商采取多种方式扩大对华投资。具体包括，“鼓励外商通过参股并购等各种方式参与国有企业改组改造，引导符合条件的外商投资企业境内上市，促进外资股权投资和创业投资的发展。”

Ma pointed out that China will expand the new area of opening-up and explore new cooperation space, so as to create good environment for investment cooperation and innovation between domestic and foreign enterprises. The foreign investment companies located at coastal regions are encouraged to move to the central and western regions and the improvement of opening-up level of the central and western regions will be stressed on. The investment methods should be innovated and the foreign investors are encouraged to enhance the investment in China in various ways, including "encouraging the foreign investors to participate in the restructuring and reformation of State-owned enterprises through equity holding and M&A, and guiding the qualified foreign investment companies to be listed at China, and promoting the development of foreign equity investment and venture capital investment."

马凯还表示，中国将进一步完善外资并购的监管体系和反垄断检查机制，并鼓励跨国公司在华设立地区总部、研发中心，鼓励外资投向高端制造、现代服务业、新能源和节能环保等领域。

Ma also stated that China will further improve the regulatory system and anti-monopoly investigation mechanism for foreign investment M&A, and encourage

international companies to set up regional headquarters and research and development centers at China and invest in the sectors of high-end manufacture, modern service, new energy and energy saving etc.

[Top](#)

- 广东省原则通过《推动率先基本实现粤港澳服务贸易自由化行动计划》（来源：商务部网站，2012 年 9 月 19 日）

Guangdong Province Adopts the Action Plan for Leading the Service Trade Liberalization among Guangdong, Hong Kong and Macao (Source: www.mofcom.gov.cn, September 19, 2012)

近日，广东省委常委会议并原则通过《推动率先基本实现粤港澳服务贸易自由化行动计划》，为深化粤港澳服务贸易合作提出了总体方针与行动指南。根据行动计划，广东省将在 2014 年率先基本实现粤港澳服务贸易自由化的总体目标。

Recently, the Standing Committee of Guangdong Provincial People's Congress has deliberated and adopted in principle the Action Plan for Leading the Service Trade Liberalization among Guangdong, Hong Kong and Macao, stating the overall policies and action guidelines for deepening the service trade cooperation among Guangdong, Hong Kong and Macao. According to the Action Plan, Guangdong will take the lead to achieve the overall objectives of the service trade liberalization among Guangdong, Hong Kong and Macao by 2014.

[Top](#)

- 广药资产重组获商务部反垄断审查通过、拟购买资产评估结果或国资委核准和备案（来源：static.sse.com.cn，2012 年 9 月 20 日）

Guangzhou Pharmaceuticals Passes MOFCOM's Antitrust Review In Assets Restructuring (Source: static.sse.com.cn, September 20, 2012)

广州医药集团有限公司近日收到广东省国资委的《广东省人民政府国有资产监督管理委员会关于重大资产重组方案的批复》和商务部反垄断局的《审查决定通知》，分别同意该公司的整体上市方案及确认通过商务部重大资产重组涉及经营者集中反垄断审查。此外国有资产监督管理部门核准并备案该公司拟发行股份购买保联拓展有限公司 100% 股权和广州百特医疗用品有限公司 12.5% 股权的资产评估结果。

Guangzhou Pharmaceuticals Corporation received the “Reply of the State-Owned Assets Supervision and Administration Commission of Guangdong Provincial People's Government on Approving the Major Asset Restructuring Plan” and the “Notice on Review Decision” from the Antitrust Authority of the Ministry of Commerce (MOFCOM), approving the company's overall listing plan and confirming that the company has passed the MOFCOM's antitrust review of the concentration of operators involved in its major asset restructuring. The State-owned assets supervision and administration authority has approved and filed the asset assessment result relating to the company's proposed issuance of shares to purchase 100% of the equity of Po Lian Development Company Limited and 12.5% of the equity of Baxter Healthcare (Guangzhou) Co., Ltd.

[Top](#)

- 深圳将出台前海外商投资优惠政策（来源：证券时报，2012 年 9 月 26 日）

Shenzhen to Promulgate Preferential Policies on Foreign Investment in Qianhai
(Source: www.stcn.com, September 26, 2012)

深圳金融办副主任肖亚飞 9 月 20 日透露，深圳前海外商投资优惠政策即将出台，目前深圳市政府及相关部门正就此积极研究和部署。肖亚飞表示，前海外商投资优惠政策将在充分利用前海人民币离岸业务基础上，以吸引香港及国际外资为目标，致力将前海打造成全国性的财富管理中心、中小型科技企业融资中心，支持包括发展并购基金、产业基金、天使基金、对冲基金等各类基金。

On September 20, Xiao Yafei, Deputy Director of the Department of Financial Services of the Shenzhen Municipal Government, disclosed that the preferential policies on foreign investment in Shenzhen's Qianhai were under study and arrangement by Shenzhen municipal government together with the relevant authorities, and would be promulgated soon. Xiao Yafei states that based on CNH business of Qianhai and the aim to attract Hong Kong and international investment, the foreign investment preferential policies of Qianhai will endeavor to build Qianhai into a national wealth management center and a financing center for small and medium-sized technology enterprises, and to support the development of different funds, such as M&A funds, industry funds, angel funds and hedge funds.

[Top](#)

- 全球小家电巨头飞利浦收购奔腾电器（来源：商务部研究院信息咨询中心，2012 年 9 月 28 日）

Global Domestic Appliances Giant PHILIPS Acquires POVOS (Source: Information Consultation Center of MOFCOM Institute, September 28, 2012)

飞利浦优质生活事业部首席执行长诺彼得日前在上海表示，收购奔腾电器主要为进入中国二三级市场，也为飞利浦厨房家电在华寻找成本优势，对奔腾电器的整合正在进行中。作为全球小家电领域的巨头，2010 年飞利浦优质生活事业部销售额为 58 亿欧元。在这一部门的销售构成中，新兴国家市场占据 41%，发达国家市场占 59%。

Recently, Pieter Nota, Chief Executive Officer of PHILIPS Consumer Lifestyle, said in Shanghai that PHILIPS had acquired POVOS Electric Appliance to enter the second and third tiers of China market, and to obtain cost advantage for Philips' kitchen domestic appliances in China. The integrated arrangement for POVOS is under way. As a domestic appliance giant in the world, PHILIPS Consumer Lifestyle achieved the turnover of EUR5.8 billion in 2010, among which 41 percent was contributed by the market of emerging countries, and 59 percent by the market of developed countries.

[Top](#)

 Please consider the environment before printing this paper

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.