

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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Dacheng Law Offices (DCL) and JF ZHANG ASSOCIATES (JFZ) commented on the recent updates of Investment Canada Act in relation to SOE guideline and foreign investments in Canada

立法新闻

LEGISLATIVE NEWS

- **商务部等六部门出台《关于规范和促进边境经济合作区发展的意见》（来源：新华网，2012年12月7日）**

Six Authorities Including MOFCOM Release the Opinions on Regulating and Promoting the Development of Border Economic Cooperation Zones (Source: www.xinhuanet.com, December 7, 2012)

12月4日-5日，商务部在昆明召开全国边境经济合作区工作会议。会上发布了由商务部、财政部、国土资源部、住房和城乡建设部、海关总署、税务总局等六部门联合制定的《关于规范和促进边境经济合作区发展的意见》。

During December 4-5, 2012, the Ministry of Commerce ("MOFCOM") held the national border economic cooperation zone working meeting in Kunming. In the meeting, the Opinions on Regulating and Promoting the Development of Border Economic Cooperation Zones (the "Opinions") jointly formulated by the MOFCOM, the Ministry of Finance, the Ministry of Land and Resources, the Ministry of Housing and Urban-Rural Development, the State Administration of Customs and the State Administration of Taxation were released.

《意见》主要包括加大对边境经济合作区符合条件的基础设施建设贷款贴息支持力度；设在西部地区边境经济合作区内的鼓励类产业企业，在2020年底前减按15%的税率征收企业所得税；赋予边境经济合作区对外商投资道路运输（旅客运输）、国际货运代理、批发等行业的审核管理权限。

The Opinions mainly cover following contents: increasing the support of subsidies on interests in the loans for construction of infrastructure of border economic cooperation zones satisfying relevant conditions; collecting enterprise income tax on the encouraged

industrial enterprises established in the border economic cooperation zones in the west regions at the reduced rate of 15 percent by the end of 2020; empowering the border economic cooperation zones the authority of examination, approval and administration on the industries such as foreign-invested road transportation (passenger transportation), international freight forwarder, and wholesale.

此外，意见还就土地管理、海关特殊监管、劳务合作和工程承包以及人员往来便利化等方面提出了鼓励政策和支持措施。

In addition, the Opinions also specify the encouraging policies and supporting measures with respect to the land administration, special supervision over customs, labor cooperation and engineering contracting, as well as personnel exchange facilitation.

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- 商务部 卫生部联合发布《关于香港和澳门服务提供者在内地设立医疗机构有关问题的通知》（来源：卫生部网站，2012 年 12 月 11 日）

MOFCOM and MOH Jointly Promulgate the Circular on Issues Concerning Establishment of Medical Institutions in the Mainland by Hong Kong and Macao Service Providers (Source: www.moh.gov.cn, December 11, 2012)

近日，商务部、卫生部联合发布了《关于香港和澳门服务提供者在内地设立医疗机构有关问题的通知》（《通知》），自 2013 年 1 月 1 日起施行。《通知》允许港澳服务提供者在内地以独资形式、或与内地的医疗机构、公司、企业和其他经济组织以合资或合作形式设置医疗机构。香港和澳门服务提供者在内地设置合资、合作医疗机构以及除独资医院、独资疗养院外其他独资医疗机构的，其设置的标准和要求按照内地单位或个人设置医疗机构办理。

Recently, the Ministry of Commerce ("MOFCOM") and the Ministry of Health ("MOH") jointly promulgated the Circular on Issues Concerning Establishment of Medical Institutions in the Mainland by Hong Kong and Macao Service Providers (the "Circular"), which shall come into effect on January 1, 2013. According to the Circular, Hong Kong and Macao service providers are permitted to establish medical institutions in the Mainland in the form of sole proprietorship or of equity or cooperative joint venture with the medical institutions, companies, enterprises or other economical organizations in the Mainland. Hong Kong and Macao service providers shall establish equity or cooperative joint venture medical institutions or the solely-invested medical institutions other than solely-invested hospital and solely-invested sanatorium in according with the standards and requirements of medical institutions established by entities or individuals in the Mainland.

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- 江苏首颁《江苏省保护和促进台湾同胞投资条例》（来源：商务部网站，2012 年 12 月 31 日）

Jiangsu Takes the Lead to Promulgate the Regulations on the Protection and Promotion of Investment by Compatriots from Taiwan (Source: www.mofcom.gov.cn, December 31, 2012)

《江苏省保护和促进台湾同胞投资条例》(《条例》) 将于 12 月 31 日起施行。这是《海峡两岸投资保护和促进协议》签署后, 祖国大陆颁布出台的第一个台胞投资地方法规。

The Regulations of Jiangsu on the Protection and Promotion of Investment by Compatriots from Taiwan (the "Regulations") will take effect on December 31. The Regulations are the first local regulations on investment by compatriots from Taiwan in China's Mainland after the signing of the Cross-Strait Agreement on Investment Protection and Promotion.

《条例》规定, 台湾同胞投资企业或者个体工商户, 享受本省颁布的投资及与投资相关的各项扶持发展的政策和服务。《条例》对台胞的生活便利服务作出人性化规定。对于投资征收问题, 《条例》明确: 对台胞投资者的投资不实行国有化, 只有在因公共利益需要的特殊情况下可以进行投资征收, 并规定了完备的程序: 拟定征收补偿方案应当征求台胞投资者的意见; 征收实施前, 需签订征收补偿协议。

The Regulations state that enterprises invested, or businesses individually-owned, by compatriots from Taiwan are entitled to enjoy all the investment and investment-related supporting policies and services of Jiangsu province. The Regulations have the provisions which facilitate the daily life of compatriots from Taiwan. In terms of investment confiscation, the Regulations clarify that investment by compatriots from Taiwan shall not be nationalized, unless in the special circumstance to meet the needs of public interest. Complete procedures have also been prescribed. The drafted compensation plan shall be sent to investors from Taiwan to seek their comments, and a confiscation compensation agreement shall be signed before actual confiscation.

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投资动态

INVESTMENT DEVELOPMENTS

- **国家能源局: 鼓励外资勘探开发页岩气 (来源: 上海证券报, 2012 年 12 月 4 日)**
NEA: Encourage Foreign Investment in Prospecting and Exploitation of Shale Gas (Source: Shanghai Securities News, December 4, 2012)

12 月 3 日, 国家能源局副局长刘琦在首届能源国际投资合作论坛上表示, 近年来, 我国可再生能源和新能源发展迅速, 预计今年风电并网装机将达 6500 万千瓦, 发电量超过 1 千亿千瓦时; 太阳能发电增长强劲, 今年装机容量将突破 700 万千瓦。

On December 3, according to Liu Qi, the Vice President of the National Energy Administration ("NEA"), at the first session of the international energy investment cooperation forum, renewable and new energies in China have been developed rapidly in recent years, and thus the wind power grid integration and installation is expected to reach

65 million kw with the generation capacity exceeding 100 billion kw/h in this year, and the installation capacity will reach 7 million kw in this year resulting from the strong growth in generation capacity of solar energy.

目前中国已形成完善的外商投资法律体系，出台了一系列鼓励外商投资的政策和产业指导目录。在能源领域，中国鼓励外商以合作的方式，进行石油、天然气勘探开发，开展页岩气等非常规油气资源勘探开发，鼓励投资建设新能源电站、以发电为主的水电站和采用清洁燃烧技术的火电。

At present, China has formed perfect law systems for foreign investment, and promulgated a series of policies and catalogues of industry guidance for encouraging foreign investments. In the energy field, China encourages the foreign merchants, in a cooperation manner, to prospect and exploit the oil or natural gas, prospect and exploit unconventional oil and gas such as shale gas, and encourages investment in the construction of new energy power stations, hydroelectric stations and the thermal power stations with clean combustion techniques.

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热点评论

HOT COMMENTS

- 大成-长基评论：《投资加拿大法》最新动向之《国有企业修订指南》及外国国企投资政策解析

Dacheng Law Offices (DCL) and JF ZHANG ASSOCIATES (JFZ) commented on the recent updates of Investment Canada Act in relation to SOE guideline and foreign investments in Canada

大成律师事务所高级合伙人邓永泉 (Dennis Deng) 律师在中海油-Nexen 收购批准之后，就《投资加拿大法》的最新修订评论说，“进一步明确国有企业定义及限制国有企业收购的资产类别，表明加拿大政府将限制外国国有企业未来对加拿大油、气项目控制权的收购，这是加拿大政府投资政策的重大转变。这项转变，将是中国和其他亚洲国家的非国有企业，凭借亚洲经济前所未有的发展势头，在加拿大西部投资并购大潮中一展身手的契机。作为亚洲最大的法律服务机构之一，大成律师事务所已建立了覆盖全国、遍布世界重要城市的全球法律服务网络。大成将一如既往地帮助我们的客户（包括私人企业和政府机构）抓住中国经济发展和城市化所带来的各种机遇。加拿大能源与自然资源生产商目前正积极寻求美国以外的新兴市场，借此良机，我们将不断提升专业水平以拓展瞬息万变的加拿大法律服务市场。与此同时，我们也坚信：非国有控股企业，包括含有少数国有股份的企业，将在不久之后的中国海外投资进程中发挥更多的作用。”

Dennis Deng, Sr. Partner and director of international practice from DCL, commented

on the approval of CNOOC's take-over bid of Nexen, "The further clarifications in definition of SOE (State-owned Enterprises) and the asset classes of which take-over bid by SOEs will be restricted indicate a major policy shifting to limit SOEs to take majority stakes of Canadian oil and gas assets. The policy change opens up opportunities to many of our non-state-controlled companies from China and other Asian countries to be part of the M&A booming in western Canada driven by the unprecedented economic growth in Asia. As one of the biggest legal services providers in Asia with a national network across China and around the world, DCL continues to support our clients in both private and public sectors to capitalize the opportunities created by China's economic growth and urbanization. We are determined to continue to develop our expertise and expand our services to the changing Canadian market where energy and natural resources producers are actively seeking alternative emerging market beyond the United States. Meanwhile it is our belief that non-state-controlled enterprises, including these with minority ownerships by state, will play a much bigger role in China's outbound investments in the near future."

“以出口贸易和制造业为发展动力，中国经济经过 30 多年奇迹般地持续增长之后，已成功跃上了一个新的发展平台。而于此同时，世界经济格局已被 08 年的金融危机深刻改变。因此，中国企业和外国投资者均需以与 10 年甚至 5 年之前完全不同的心态和策略来应对未来中国境内外投资的运作。”大成律师事务所战略投资顾问、长基咨询总裁张建峰先生于近日在北京接受华尔街日报记者采访时评论说，“对于中国未来发展最根本的束缚在于自然资源和能源短缺，而这些资源在加拿大则是非常丰富，与中国市场的巨大需求形成良性互补。另一方面，由于美国对进口能源的依赖性逐步降低，加拿大生产商急需拓展美国以外的产品终端市场，亚洲市场是加拿大的最佳选择，由此，便不能对世界第二大经济实体视而不见。加拿大政府反复承诺提高 WTO 成员国投资者的审查门槛，非常受中国非国有企业的欢迎。即使由于缺乏有效的沟通和协调，中国投资者在管理和并购后整合依然存在挑战，但是我们预测：并购交易量未来仍会增长，但交易规模会有所缩小，因为私人公司如今更加谨慎并更倾向于选择非控股地位。”

"China's economy has come to a different growth stage after more than 30 years phenomenon perpetuated by exporting and manufacturing while the world economic structure has profoundly changed by the 08 financial crises. It takes different mindset and strategy from 10 or even 5 years ago for both Chinese firms and foreign investors to operate in and outside China.", J. Peter Zhang, DCL Strategic Advisor and managing director of JFZ commented in his recent interview with WSJ in Beijing. "The fundamental constrains for China to develop are natural resources and energies, which are abundant in Canada. On the other hand, it is an imperative for Canadian producers to diversify their end-market beyond the United States to Asia. You simply can't ignore the second largest economy in the world. The reiterated commitments by Canadian government to increase review threshold by WTO investors are definitely welcomed by non-SOEs firms from China. Although integration and co-management will remain challenging due to lack of effective communication and coordination, we predict the numbers of M&A transactions will increase, but average transaction size will be much smaller as the private sectors are more cautious and willing to take non-controlling position."

大成律师事务所和长基咨询是中加经济合作的良好纽带，并将一如既往协助其客户加强中加经济关系。

DCL and JFZ are optimistic to the complementary Sino-Canadian economic tie and committed to supporting their clients to strengthen the relationship.

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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.