

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**

- 交通运输部发布《关于鼓励和引导水运行业民营企业境外投资和跨国经营的若干意见》（来源：中国交通报，2012 年 10 月 9 日）

MOT Promulgates Several Opinions on Encouraging and Guiding the Overseas Investment and Multinational Operations of Private Enterprises in the Water Transport Industry (Source: www.zgjt.com, October 9, 2012)

交通运输部日前发布《关于鼓励和引导水运行业民营企业境外投资和跨国经营的若干意见》（《意见》）。《意见》鼓励和引导航运、港口、水运建设等水运行业民营企业积极开展境外投资和跨国经营业务。鼓励民营水运企业“组团”发展，成立产业联盟，增强国际竞争能力。

Recently, the Ministry of Transport ("MOT") has promulgated Several Opinions on Encouraging and Guiding the Overseas Investment and Multinational Operations of Private Enterprises in the Water Transport Industry (the "Opinions"). The Opinions encourage and guide the private enterprises in shipping, ports, water transport development and other sectors of the water transport industry to actively develop overseas investment and

multinational operations, as well as encourage private water transport enterprises to develop in "clusters" and establish industrial alliance to improve their international competitiveness.

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- 中国证监会公布《关于修改〈外资参股证券公司设立规则〉的决定》(来源: 中国证监会网站, 2012 年 10 月 17 日)

CSRC Promulgates the Decision on Revising the Rules on the Establishment of Foreign-invested Securities Companies (Source: www.csrc.gov.cn, October 17, 2012)

10 月 11 日, 中国证监会公布《关于修改〈外资参股证券公司设立规则〉的决定》, 自公布之日起施行。修改后的《外资参股证券公司设立规则》规定, 境外股东持股比例或者在外资参股证券公司中拥有的权益比例, 累计(包括直接持有和间接控制)不得超过 49%。境内股东中的内资证券公司, 应当至少有 1 名的持股比例或者在外资参股证券公司中拥有的权益比例不低于 49%。内资证券公司变更为外资参股证券公司后, 应当至少有 1 名内资股东的持股比例不低于 49%。

On October 11, the China Securities Regulatory Commission ("CSRC") promulgated the Decision on Revising the Rules on the Establishment of Foreign-invested Securities Companies, effective as of the date of promulgation. According to the revised Rules on the Establishment of Foreign-invested Securities Companies, the accumulated shares held (including directly and indirectly) by overseas shareholders or their shares in a foreign-invested securities company shall not account for more than 49 percent. At least one domestic securities company shall hold more than 49 percent of the shares or the equities in a foreign-invested securities company. After a domestic securities company is transformed to a foreign-invested securities company, at least one domestic shareholder shall hold more t

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- 中国保监会发布《保险资金境外投资管理暂行办法实施细则》(来源: 中国保监会网站, 2012 年 10 月 23 日)

CIRC Promulgates the Implementing Rules for the Interim Administrative Measures on the Overseas Investment of Insurance Funds (Source: www.circ.gov.cn, October 23, 2012)

10 月 12 日, 中国保监会发布了《保险资金境外投资管理暂行办法实施细则》(《细则》)。《细则》要求保险机构境外投资余额不超过上年末总资产的 15%, 对部分新兴市场投资余额不超过上年末总资产的 10%。直接投资的未上市企业股权, 限于金融、养老、医疗等行业。《细则》明确, 保险资金境外投资范围包括国家或地区的货币市场类、固定收益类、权益类以及不动产, 其中直接投资的未上市企业股权, 限于金融、养老、医疗、能源、资源、汽车服务和现代农业等企业股权。

On October 12, the China Insurance Regulatory Commission ("CIRC") promulgated the Implementing Rules for the Interim Administrative Measures on the Overseas Investment of Insurance Funds (the "Rules"). The Rules require that the overseas investment balance of an insurance institution shall not be more than 15 percent of its total assets at the end of the previous year, while the balance of the investment in certain emerging markets shall not be more than 10 percent of its total assets at the end of the

previous year. The stake of non-listed companies obtained from direct investment is confined to finance, pension insurance, medical care and other industries. The Rules specify that the overseas investment scope of insurance funds includes currency market, fixed income, equity and real estate of other countries and regions, provided that the stake of non-listed companies obtained from direct investment is confined to the companies in finance, pension insurance, medical care, energy, resources, automobile services and modern agriculture industries.

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- 商务部：房地产企业股权不得作为外投资企业出资（来源：商务部网站，2012 年 10 月 24 日）

MOFCOM: Equity of Real Estate Enterprises Not Acceptable as the Capital Contribution of Foreign-invested Enterprises (Source: www.mofcom.gov.cn, October 24, 2012)

9 月 21 日，商务部公布《商务部关于涉及外商投资企业股权出资的暂行规定》，自 2012 年 10 月 22 日起施行。《规定》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。

On September 21, the Ministry of Commerce ("MOFCOM") promulgated the Interim Provisions of the Ministry of Commerce for Equity Contribution of Foreign-invested Enterprises, effective as of October 22, 2012. The Provisions clarify the definition, conditions, applicable industrial policies, appraisal and pricing, as well as the examination and approval authority and procedures of equity contribution, providing operation regulations and policy reference on equity contribution for domestic and foreign investors.

《规定》明确，用作外商投资企业出资的股权应当权属清晰、权能完整，依法可以转让。同时房地产企业、外商投资性公司、外商投资创业（股权）投资企业的股权，不得用于外投资企业出资。不得用于外投资企业出资的股权还包括：股权企业的注册资本未缴足；股权已被设立质权；股权已被依法冻结；股权企业章程（合同）约定不得转让的股权；未按规定参加或未通过上一年度外商投资企业联合年检的外商投资企业的股权等多种情况。

The Provisions specify that the equity used for capital contribution by foreign-invested enterprises shall have a definite owner, possess complete powers and functions and be transferable in accordance with the law. However, the equity of real estate enterprises, foreign-invested investment companies and foreign-invested venture capital (equity) companies shall not be used for the equity contribution of foreign-invested enterprises. The equity shall not be used for the equity contribution of foreign-invested enterprises in the following circumstances: the registered capital of an equity enterprise fails to be paid up; a pledge is imposed on equity; equity is duly frozen; the equity is non-transferable as provided in the articles of association (contract) of an equity enterprise; or a foreign-invested enterprise fails to go through the formalities or pass the joint annual review of foreign-invested enterprises of the previous year as required.

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- 外资参股期货公司重启在即 规则或年内出台（来源：中国证券网，2012 年 10 月 30 日）

Upcoming Restart of Foreign Investment in Futures Companies with the Possibility of the Rules to Be Issued within This Year (Source: www.cnstock.com, October 30, 2012)

据悉，目前监管部门正在积极筹备外资参股我国期货公司有关规则的制订，预计年内出台“可能性很大”。据了解，本次制订的外资参股期货公司规则主要涉及合格外资股东资格的界定，外资持股比例的提升幅度，以及外资参股期货公司后如何规范运行等方面内容。知情人士透露，此番正在制定中的外资参股期货公司有关规定，即是为落实今年 5 月第四轮中美战略与经济对话中，中方关于“允许外资参股期货公司比例提升至 49%”的有关承诺。

It is reported that regulatory authorities are currently arranging for the formulation of the rules concerning foreign investment in China's futures companies, which might possibly be issued by the end of this year. It is said that such rules for foreign investment in futures companies mainly include the determination of qualified foreign shareholders, the raised proportion of foreign equity, as well as how to regulate operations after foreign investment in futures companies. According to insiders, the relevant provisions on foreign investment in futures companies currently under preparation are Chinese party's fulfillment of its undertaking of "permitting to raise foreign investors' stake in futures companies to 49 percent" made during the fourth round of Sino-U.S. dialogue on strategies and economy in May 2012.

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投资动态

INVESTMENT DEVELOPMENTS

- 国家发改委批复 15 个海外投资项目（来源：news.xinhuanet.com，2012 年 10 月 9 日）
NDRC Approves 15 Overseas Investment Projects (Source: news.xinhuanet.com, October 9, 2012)

昨日，国家发改委批复 15 个海外投资项目，涉及能源、金融、通信、基建等领域。这次批复 15 个海外投资项目中，能源项目有 7 个：包括三个太阳能光伏项目、一个镍矿项目、一个石油公司收购项目，另外两个是输电线和电力项目。此外，还有基金、橡胶、基建、货船、轮胎、通信项目各一个，另外有两个工业类的股权收购项目。

The National Development and Reform Commission (NDRC) on 8 October 2012 approved 15 overseas investment projects involving fields of energy, finance, communications, capital construction and others. Of the 15 projects approved this time,

seven are energy projects, including three solar photovoltaic projects, one nickel ore project, one for the acquisition of an oil company, one transmission line project and one electricity project. There are also projects concerning funds, rubber, capital construction, cargo ships, tires and communications, as well as two equity acquisition projects.

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- **外资行拟曲线进军前海 推动设立母基金（来源：每日经济新闻，2012 年 10 月 19 日）**
Foreign Bank to Advance in Qianhai Indirectly and Promote the Establishment of PE FOF (Source: www.nbd.com.cn, October 19, 2012)

10 月 16 日，深圳会展中心举行“走进前海”投资推介会。友利银行(中国)有限公司深圳分行副总经理高诚靖透露，目前，他们正在推动符合条件的境外投资者运用友利银行母行吸收的人民币在前海设立母基金。然后投资于包括中小企业债在内，政策所允许的资本市场产品。在此前深圳前海出台的 22 条政策中，关于金融政策的就有八条，其中第四条“支持设立前海股权投资母基金。”和第五条“支持包括香港在内的外资股权投资基金在前海创新发展，积极探索外资股权投资企业在资本金结汇、投资、基金管理等方面的新模式。”

On October 16, the "Join Hands with Qianhai" investment promotion meeting was held at the Shenzhen Convention and Exhibition Center. Gao Chengjing, the Deputy General Manager of Shenzhen branch of Woori Bank China Limited., disclosed that they were promoting qualified foreign investors to establish private equity fund of funds (PE FOF) in Qianhai with the renminbi-denominated fund absorbed by the head office of Woori Bank China Limited., which would later be invested in the permitted capital market products, including small and medium enterprise bonds. In the 22 policies previously issued by Shenzhen's Qianhai, eight are financial policies, including Article 4 "support the establishment of Qianhai equity fund of funds" and Article 5 "support the innovative development of foreign equity investment funds (including Hong Kong) in Qianhai, and proactively develop the new models of foreign equity investment enterprises in terms of capital settlement, investment and fund management."

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- **江苏拟允许个人境外直接投资 苏州南通将先行试点（来源：中国江苏网，2012 年 10 月 31 日）**
Jiangsu to Permit Direct Overseas Investment by Individuals Taking Suzhou and Nantong as the Pilot (Source: www.jschina.com.cn, October 31, 2012)

10 月 30 日，人民银行南京分行副行长陶为群在第三季度金融通气会上透露，江苏正在向国务院上报个人境外直接投资改革试点方案，初步确定苏州、南通两市先行先试。

On October 30, Tao Weiqun, the deputy chairman of Nanjing branch of the People's Bank of China ("PBC"), said at the third quarter financial information briefing that Jiangsu was going to submit the pilot program plan for direct overseas investment by individuals to the State Council, and two cities, Suzhou and Nantong, have been determined to launch the pilot program first.

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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.