www.dachenglaw.com
北京市东直门南大街 3 号国华投资大厦 5 层/12 层/15 层（100007）
5/F, 12/F, 15/F, Guohua Plaza, 3 Dongzhimennan Avenue,
Beijing 100007, China
Tel: +8610-58137799
Fax: +8610-58137788

DACHENG LAW OFFICES
大成律师事务所

中国法通讯
China Law Newsletter

跨境贸易与投资
Cross-border Trade and Investment

第 7 期 • **Issue 7**
2012 年 2 月 • **February 2012**

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。您若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.

目录
CONTENTS

立法新闻 LEGISLATIVE NEWS [3]

[1] 商务部将启动研究外资“三法”修订
The Ministry of Commerce to Launch Study on Revising "Three Laws" on Foreign Capital

[2] 商务部拟出台新措施“稳出口”
MOFCOM proposes to release new measures to stabilize export

[3] 海关总署就执行《外商投资产业指导目录（2011 年修订）》发布公告
GAC Issues Announcement on Performing the Catalogue for the Guidance of Foreign Investment Industries (Revised in 2011)

投资动态 INVESTMENT DEVELOPMENTS [5]

[4] 沪港就商贸投资、金融等九大领域达成合作共识

Shanghai and Hong Kong Reached a Consensus in 9 Major Fields Including Trade Investment and Finance

[5] 海关总署发布 2011 年中国外贸进出口情况

GAC posts 2011 China's foreign trade data on import and export

[6] 《2011 上海外商投资环境白皮书》称上海 2011 年外资创历史新高

Shanghai foreign capital inflows hit record high in 2011

[7] 我国吸收外资再创新高　服务业引资首超制造业

Foreign investment in China sets a new high, and the service sector overtakes the manufacturing sector for the first time in attracting foreign investment

[8] 国家外汇管理局公布 2011 年 9 月末中国国际投资头寸表

SAFE posts data on China's international investment position by end-September

热点追踪 HOT TOPICS [2]

[9] 境内企业首次获准借用境外中长期人民币商业贷款

Domestic Enterprise Obtained Approval to Borrow Overseas Long and Medium-Term RMB Commercial Loans for the First Time

[10] 奥巴马否决美加边界 Keystone 石油管道项目

President Obama rejects the Keystone oil pipeline project at the US-Canada Border

立法新闻
LEGISLATIVE NEWS

- **商务部将启动研究外资“三法”修订（来源：中国证券报，2012 年 1 月 6 日）**

  The Ministry of Commerce to Launch Study on Revising "Three Laws" on Foreign Capital (source: China Securities Journal, 6 January 2012)

商务部部长陈德铭 5 日在全国商务工作会议上表示，2012 年商务部将着力提高利用外资质量和水平，启动研究外资“三法”（外资企业法、中外合资经营企业法、中外合作经营企业法）的修订。

Chen Deming, director of the Ministry of Commerce said at the National Business

DACHENG LAW OFFICES
大成律师事务所

Conference on January 5 that the Ministry of Commerce will focus on improving the quality and level of foreign capital utilization in 2012 and launch study on revising "three laws" on foreign capital (Law on Foreign-Capital Enterprises, Law on China-Foreign Joint Ventures and Law on China-Foreign Cooperative Enterprises).

在提升外资产业层次，优化区域布局方面，将实施新修订的《外商投资产业指导目录》，研究制订战略性新兴产业引资政策，鼓励跨国公司在华设立地区总部和功能性机构。修订并实施《中西部地区外商投资优势产业目录》，提高中西部承接产业转移能力，支持符合节能环保要求的外资企业向中西部转移。

In the aspect of improving foreign-investment industry level and optimizing regional layout, it will implement the newly-revised Catalogue for the Guidance of Foreign Investment Industries, research and formulate capital-attracting policies for strategic emerging industries, and encourage the establishment of regional headquarters and functional institutions in China. It will also revise and implement the Catalogue of Advantaged Industries for Foreign Investment in the Central-Western Region, improve the industry transfer capability of the central-western region, and support foreign-capital enterprises conforming to energy-efficient and environmental-protection requirements to transfer to the region.

Top

- **商务部拟出台新措施“稳出口”（来源：上海证券报，2012 年 1 月 6 日）**

MOFCOM proposes to release new measures to stabilize export (source: Shanghai Securities Journal, 6 January 2012)

2012 年 1 月 5 日，商务部部长陈德铭在全国商务工作会议上表示，2011 年我国外贸总体增长较快，预计全年进出口总额将达到 3.6 万亿美元，增长 20%以上，贸易顺差继续收窄，预计在 1600 亿美元左右。同时，陈德铭指出，2012 年要保持外贸政策的稳定性和连续性，研究出台新的促进措施，巩固和扩大国际市场份额。保持出口退税政策基本稳定，完善退税机制，加快退税进度。稳定加工贸易政策。推动简化进出口外汇核销管理。拓宽外贸企业融资渠道，改善对中小企业的金融服务。

On January 5, 2012, Minister of Commerce Chen Deming said at the national conference on commerce that China's foreign trade grew rapidly in 2011, estimated annual import and export volume would reach USD 3.6 trn, up 20% or more, trade surplus continued to be eased and was expected to reach USD 160 bn. Meanwhile, Chen pointed out that we would maintain stability and continuity of foreign trade policy in 2012, study and release new promotion measures, as well as consolidate and expand international market shares; maintain the basic stability of export tax rebate policy, improve the tax rebate mechanism, speed up the tax rebate progress; stabilize the processing trade policy; simplify foreign exchange offset administration for import and export; broaden the financing channels for foreign trade enterprises and improve financial services provided for small and medium enterprises.

Top

- **海关总署就执行《外商投资产业指导目录（2011 年修订）》发布公告（来源：海关总**

署，2012 年 1 月 30 日）

GAC Issues Announcement on Performing the Catalogue for the Guidance of Foreign Investment Industries (Revised in 2011) (source: www.customs.gov.cn, 30 January 2012)

海关总署就《外商投资产业指导目录（2011 年修订）》（《目录》）在海关执行中的有关问题发布公告。

The General Administration of Customs ("GAC") has issued announcement on the issues concerning Customs' performance of the Catalogue for the Guidance of Foreign Investment Industries (Revised in 2011) (the "Catalogue").

根据公告，自 2012 年 1 月 30 日起，对属于《目录（》鼓励类范围的外商投资项目（包括增资项目），在投资总额内进口的自用设备以及按照合同随上述设备进口的技术和配套件、备件，除《外商投资项目不予免税的进口商品目录》和《进口不予免税的重大技术装备和产品目录》所列商品外，按照《国务院关于调整进口设备税收政策的通知》、海关总署公告 2008 年第 103 号及其他相关规定免征关税，照章征收进口环节增值税。

According to the Announcement, as for the foreign funded projects (including capital increase) in the encouraging scope of the Catalogue, except the commodities listed in Catalogue of Non-duty-free Commodities to Be Imported for Foreign-funded Projects, as well as the Catalog of Major Non-duty-free Technical Equipment and Products, the imported equipment for self-use within the total investment limit as well as technologies, auxiliary devices and spare parts imported together with the aforesaid equipment as specified in contracts, shall, from Jan. 30, 2012, be exempted from tariff duties in accordance with Circular of the State Council on Adjusting the Tax Policy of Imported Equipment, the Announcement of the General Administration of Customs (2008) No.103 and other relevant provisions, and be levied for value-added tax for imports as required.

Top

投资动态
INVESTMENT DEVELOPMENTS

- 沪港就商贸投资、金融等九大领域达成合作共识（来源：新华社，2012 年 1 月 6 日）

Shanghai and Hong Kong Reached a Consensus in 9 Major Fields Including Trade Investment and Finance (source: Xinhua News Agency, 6 January 2012)

上海与香港两地政府部门 5 日在此间举行的沪港经贸合作会议第二次会议上，就商贸投资、金融、航空、航运及物流、旅游会展等九大领域达成进一步深化合作的共识。会议形成了《沪港经贸合作会议第二次会议合作领域及内容建议书》。比照２０

０３年确立的合作领域和内容，新增了文化与创意、创新科技、医疗卫生等。

Relevant government departments of Shanghai and Hong Kong have reached a consensus on further deepening cooperation in 9 major fields including trade investment, finance, aviation, shipping as well as logistics and tourist convention and exhibition in the second session of Shanghai and Hong Kong Economic and Trade Cooperation Conference on January 5, when the Proposal of Cooperation Fields and Content in the Second Session of Shanghai and Hong Kong Economic and Trade Cooperation Conference was introduced. Compared to the cooperation fields and content established in 2003, it adds culture and originality, innovative technology, health care, etc.

商贸投资领域合作。支持香港企业在沪发展；深化经贸投资促进活动；探索两地企业联手开拓国际市场；发挥浦东ＣＥＰＡ（《内地与香港关于建立更紧密经贸关系的安排》）示范城（区）作用；研究落实ＣＥＰＡ补充协议措施。金融领域合作。加强两地金融业务合作；加强两地金融机构和金融产品合作；深化两地金融人才的培训和交流。

Cooperation in the trade investment field. It will support the development of Hong Kong enterprises in Shanghai; deepen promotion activities for economic and trade investment; explore on jointly developing international market by enterprises in these two places; give play to the role of Pudong as a demonstration CEPA (The Closer Economic Partnership Arrangement) city (district); and research and implement CEPA supplement agreement measures. Cooperation in the financial field. It will strengthen the cooperation between these two places in financial businesses; enhance their cooperation between financial institutions and in products; and deepen the training and exchange of financial personnel.

Top

- **海关总署发布 2011 年中国外贸进出口情况（来源：海关总署，2012 年 1 月 11 日）**

GAC posts 2011 China's foreign trade data on import and export (source: General Administration of Customs, 11 January 2012)

海关总署 2012 年 1 月 10 日发布 2011 年中国外贸进出口情况。据海关统计，2011 年，中国外贸进出口总值 36420.6 亿美元，比 2010 年同期增长 22.5%，外贸进出口总值刷新年度历史纪录。其中，出口 18986 亿美元，增长 20.3%；进口 17434.6 亿美元，增长 24.9%。贸易顺差 1551.4 亿美元，比上年净减少 263.7 亿美元，收窄 14.5%。

The General Administration of Customs (GAC) posted the 2011 China's foreign trade data on import and export on January 10, 2012. According to customs statistics, in 2011, import and export value of China's foreign trade totaled USD 3.64206 trn, up 22.5% over the same period in 2010, and the total import and export value made a new historical record. Among them, the export value was USD 1.8986 trn, up 20.3%; import value was USD 1.74346 trn, up 24.9%. Trade surplus was USD 155.14 bn, down 14.5% and representing a net decrease of USD 26.37 bn compared with the previous year.

Top

- **《2011 上海外商投资环境白皮书》称上海 2011 年外资创历史新高（来源：中国人民**

银行上海总部，2012 年 1 月 11 日）

Shanghai foreign capital inflows hit record high in 2011 (source: Shanghai Head Office of the People's Bank of China, 11 January 2012)

上海商务委 2011 年 12 月 31 日发布《2011 上海外商投资环境白皮书》称，2011 年上海合同吸收外资 201.03 亿美元，同比增长 31.3%；实际吸收外资 126.01 亿美元，同比增长 13.3%，两项指标均创历史新高。

Shanghai Municipal Commission of Commerce published the White Paper on 2011 Shanghai Foreign Investment Environment on December 31, 2011. The paper says that in the year 2011, Shanghai contractual foreign capital inflows reached USD 20.103 bn, up 31.3% year on year; actual foreign capital inflows reached USD 12.601 bn, up 13.3% year on year, both of which hit record high.

Top

- 我国吸收外资再创新高　服务业引资首超制造业（来源：新华社，2012 年 1 月 19 日）

Foreign investment in China sets a new high, and the service sector overtakes the manufacturing sector for the first time in attracting foreign investment (source: Xinhua News Agency, 19 January 2012)

商务部 18 日发布数据，2011 年我国新批设立外商投资企业 27712 家，同比增长 1.12%。实际使用外资再创历史新高达到 1160.11 亿美元，同比增长 9.72%，同期服务业实际使用外资 552.43 亿美元，占全国总量的 47.62%，首次超过制造业的比重。

According to the data released by the Ministry of Commerce on January 18, 2012, China approved the setting up of 27712 foreign invested enterprises in 2011, representing a year-on-year growth of 1.12%. Actual utilization of foreign investment in 2011 sets a historical new high to reach US$ 116011 million, realizing a year-on-year growth rate of 9.72%. In 2011, actual utilization of foreign investment in the service sector reached US$ 55243 million, accounting for 47.62% of the total nationwide, and it overtook the manufacturing sector for the first time in terms of utilization of foreign investment.

在服务业中，租赁服务、广播电影电视、专用机械设备修理、食品饮料烟草和家庭日用品批发、零售、旅游、娱乐服务等行业实际利用外资增幅同比均超过 60%。房地产业实际使用外资同比增长 12.07%，低于服务业总体增幅 8.47 个百分点。

The rental service, broadcasting, film and television, special mechanical equipment repair, wholesale and retail of food, beverage, tobacco and household items, travel and entertainment services, among others in the service sector, recorded a year-on-year growth of over 60% in the actual utilization of foreign investment. In contrast, actual utilization of foreign investment in the real estate sector grew 12.07%, 8.47 percentage point lower than the overall growth rate in the service sector.

Top

- 国家外汇管理局公布 2011 年 9 月末中国国际投资头寸表（来源：国家外汇管理局，2012 年 1 月 31 日）

SAFE posts data on China's international investment position by end-September (source: State Administration of Foreign Exchange, 31 January 2012)

2012 年 1 月 31 日，国家外汇管理局公布了 2011 年 9 月末中国国际投资头寸表。统计显示，2011 年 9 月末，我国对外金融资产 46653 亿美元，对外金融负债 27761 亿美元，对外金融净资产 18893 亿美元。在对外金融资产中，对外直接投资 3455 亿美元，证券投资 2573 亿美元，其他投资 7847 亿美元，储备资产 32779 亿美元，分别占对外金融资产的 7%、6%、17%和 70%；在对外金融负债中，外国来华直接投资 16256 亿美元，证券投资 2318 亿美元，其他投资 9187 亿美元，分别占对外金融负债的 59%、8%和 33%。

On January 31, 2012, the State Administration of Foreign Exchange (SAFE) released the data on China's international investment position by the end of September 2011. The statistical data showed that by the end of September 2011, China's international financial assets, international financial debts, and net value of international financial assets respectively reached USD 4665.3 bn, USD 2776.1 bn, and USD 1889.3 bn. With respect to China's international financial assets, the outbound direct investment amounted to USD 334.5 bn, securities investment reached USD 257.3 bn, other investment amounted to USD 784.7 bn, and the reserve assets reached USD 3277.9 bn, respectively accounting for 7%, 6%, 17% and 70% of China's internal financial assets. With respect to China's international financial debts, the foreign direct investment in China reached USD 1625.6 bn, securities investment amounted to USD 231.8 bn, and other investment reached USD 918.7 bn, respectively accounting for 59%, 8% and 33% of the international financial debts.

Top

热点追踪
HOT TOPICS

- **境内企业首次获准借用境外中长期人民币商业贷款（来源：中国证券网，2012 年 1 月 11 日）**

Domestic Enterprise Obtained Approval to Borrow Overseas Long and Medium-Term RMB Commercial Loans for the First Time (source: www.cnstock.com, 11 January 2012)

2011 年 12 月，国家发展改革委批复同意中国广东核电集团有限公司借用中国银行（香港）有限公司 30 亿元人民币商业贷款，这是境内企业首次获准借用境外中长期人民币商业贷款。

In December 2011, National Development and Reform Commission (NDRC) gave an official reply to approve China Guangdong Nuclear Power Holding Co., Ltd (CGNPC) to borrow RMB3 billion commercial loans from Bank of China (Hong Kong) Limited. This is

the first time that a domestic enterprise is approved to borrow overseas long and medium-term RMB commercial loans.

Top

- **奥巴马否决美加边界 Keystone 石油管道项目（来源：新华社，2012 年 1 月 19 日）**

  President Obama rejects the Keystone oil pipeline project at the US-Canada Border (source: Xinhua News Agency, 19 January 2012)

美国总统奥巴马 18 日宣布否决了加拿大 Keystone XL 输油管道项目。该项目拟在美国和加拿大边界建设一个巨大的跨境石油管道工程,投资 70 亿美元，预计管道全长约 2700 公里，每天输油量将达 70 万桶。由于该项目是用来运输提炼难度很高、且容易造成环境污染的油砂石油，加之今年 5 月份 Keystone 输油管道发生两次重大泄漏事故，该管道的延伸项目遭到了环保团体、农牧业组织的强烈反对。

On January 18, 2012, President Obama announced to reject the Keystone XL oil pipeline project. The proposed project contemplates to build a large cross-border oil pipeline project at the border between the US and Canada. With a total investment of US$ 7 billion, the project expects to build a pipeline of around 2700 km in length with a daily capacity of 700,000 barrels of oil. As the project will transport tar sand oils which are hard to refine and susceptible to cause environmental pollution, further complicated by the fact that the Keystone oil pipeline had two major leakages in May 2011, the extension of the pipeline was strongly opposed by environmental protection groups, farming and herding groups.

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、成都、重庆、福州、广州、哈尔滨、海口、杭州、呼和浩特、济南、昆明、南京、南宁、南通、青岛、上海、沈阳、深圳、太原、天津、武汉、乌鲁木齐、无锡、厦门、西安、西宁、银川、郑州、吉林、舟山、合肥、南昌等 34 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 34 Chinese cities, including Changchun, Changsha, Changzhou, Chengdu, Chongqing, Fuzhou, Guangzhou, Harbin, Haikou, Hangzhou, Hohhot, Jinan, Kunming, Nanjing, Nanning, Nantong, Qingdao, Shanghai, Shenyang, Shenzhen, Taiyuan, Tianjin, Wuhan, Urumqi, Wuxi, Xiamen, Xi’an, Xining, Yinchuan, Zhengzhou, Jilin, Zhoushan, Hefei and Nanchang.

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, Chicago, Los Angeles, 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’ global network of legal service is linked with WSG’s global network through its membership, which launches Dacheng’ 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.