

# 中国法通讯 China Law Newsletter

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

第26期 • Issue 26  
2013年10月 • October 2013

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 [3]

[\[1\]](#) 9部门印发《对外投资合作和对外贸易领域不良信用记录试办法》

Nine ministries issued the Measures for Bad Credit Record in Foreign Investment Cooperation and Foreign Trade Sectors (Trial)

[\[2\]](#) 商务部发布《外国投资者对上市公司战略投资管理办法（征求意见稿）》

Ministry of Commerce Releases the Administrative Measures for Strategic Investment of Foreign Investors in Listed Companies (Draft for Comments)

[\[3\]](#) 国务院印发《中国（上海）自由贸易试验区总体方案》

State Council Prints and Distributes Overall Plan for China (Shanghai) Pilot Free Trade Zone

#### 投资动态 INVESTMENT DEVELOPMENTS [2]

[\[4\]](#) 四川省商务厅发布《关于下放部分外商投资审批管理权限有关事宜的通知》

Sichuan Provincial Department of Commerce Issues Circular on the Matter Relating to Delegating Partial Administrative Power for Examination and Approval of Foreign Investment

[\[5\]](#) 河南郑州港区将可直接审批外商投资项目

Harbor District of Zhengzhou City in Henan Province May Directly Examine and Approve the Foreign Investment Projects

## 立法新闻 **LEGISLATIVE NEWS**

- 9 部门印发《对外投资合作和对外贸易领域不良信用记录试行办法》（来源：商务部，2013 年 89 月 23 日）

**Nine ministries issued the Measures for Bad Credit Record in Foreign Investment Cooperation and Foreign Trade Sectors (Trial) (Source: Ministry of Commerce, Sep 23, 2013)**

日前，商务部、外交部、公安部、住房和城乡建设部、海关总署、国家税务总局、国家工商行政管理总局、国家质量监督检验检疫总局、国家外汇管理局印发了《对外投资合作和对外贸易领域不良信用记录试行办法》（商合发[2013]248 号），明确了应列入对外投资合作不良信用记录和对外贸易不良信用记录的情形。《对外劳务合作不良信用记录试行办法》（商合函[2010]462 号）与该办法规定不一致的，以该办法为准。

Recently, the Ministry of Commerce and other eight ministries jointly issued the Measures for Bad Credit Record in Foreign Investment Cooperation and Foreign Trade Sectors (Trial), specified the circumstances to be listed in the bad credit record in foreign investment cooperation and foreign trade. For any inconsistency between the Measures for Bad Credit Record in Foreign Labor Service Cooperation and the Measures, the latter shall prevail.

该办法称对外投资合作是指在中国境内合法注册的企业在境外开展投资、承包工程和劳务合作等对外经济技术合作业务。对外贸易是指货物进出口、技术进出口和国际服务贸易。对外投资合作不良信用记录是对我国境内企业、机构和个人以及境外投资合资合作方、工程项目业主、总承包商、境外雇主、中介机构和个人有关违法违规行为信息的收集、整理、发布、保存和维护。对外贸易不良信用记录是指对从事对外贸易经营活动的法人、其他组织或者个人有关违法违规行为信息的收集、整理、发布、保存和维护。

The foreign investment cooperation shall mean the enterprises duly registered in China conducting overseas investment, contracting projects, labor service cooperation and other foreign economic and technological cooperation; the foreign trade shall mean goods import

and export, technology import and export and international trade in services. The bad credit records in foreign investment cooperation shall mean the collection, collation, release, keeping and maintenance of information related to the violations of laws and regulations by the domestic enterprises, institutions and individuals and the foreign investment partners, project owners, master contractors, overseas employers, intermediaries and individuals. The bad credit record in foreign trade shall mean the collection, collation, release, keeping and maintenance of information related to the violations of laws and regulations by the legal persons, other organizations or individuals engaging in foreign trade business activities.

[Top](#)

- 商务部发布《外国投资者对上市公司战略投资管理办法（征求意见稿）》（来源：商务部条约法律司，2013年9月27日）

**Ministry of Commerce Releases the Administrative Measures for Strategic Investment of Foreign Investors in Listed Companies (Draft for Comments) (Source: tfs.mofcom.gov.cn, Sep 27, 2013)**

为适应新形势下外商直接投资发展的需要，推动我国证券市场的健康发展，2013年9月27日，商务部发布《外国投资者对上市公司战略投资管理办法（征求意见稿）》（《办法》），公开征求意见。

In order to adapt to the demand derived by direct investment of foreign investors in the new situation, and promote the sound development of securities market in China, on September 27, 2013, the Ministry of Commerce released the Administrative Measures for Strategic Investment of Foreign Investors in Listed Companies (Draft for Comments) (the "Measures"), to seek for public comments.

《办法》适用于外国投资者（以下简称投资者）对上市公司通过具有一定规模的中长期战略性并购投资（以下简称战略投资），取得该公司 A 股股份的行为。经商务部批准，投资者可以根据《办法》对上市公司进行战略投资。

The Measures apply to such acts as foreign investors acquired A-shares of the listed companies by means of long-and-mid-term strategic investment of merger and acquisition. Approved by the Ministry of Commerce, investors may have strategic investment in listed companies according to the Measures.

[Top](#)

- 国务院印发《中国（上海）自由贸易试验区总体方案》（来源：国务院办公厅，2013年9月27日）

**State Council Prints and Distributes Overall Plan for China (Shanghai) Pilot Free Trade Zone (Source: www.mofcom.gov.cn, Sep 27, 2013)**

2013年9月18日，国务院印发《中国（上海）自由贸易试验区总体方案》（《方案》）。

The State Council printed and distributed the Overall Plan for China (Shanghai) Pilot Free Trade Zone (the "Plan") on September 18, 2013.

根据《方案》，上海自贸区将选择金融服务、航运服务、商贸服务、专业服务、文化服务以及社会服务领域扩大开放，暂停或取消投资者资质要求、股比限制、经营范围限制等准入限制措施（银行业机构、信息通信服务除外），以营造有利于各类投资者平等准入的市场环境。

According to the Plan, Shanghai free trade zone will expand the scope of opening-up in the fields of financial services, shipping services, trade services, professional services, cultural services and social services and suspend or cancel the access restriction measures such as qualification requirements, restrictions on equity ratio and restrictions on business scope for investors (except for the banking institutions and information and communications service) so as to create market environment that is conducive to equal access of investors of various kinds.

《方案》还提出，要求自贸区探索建立负面清单管理模式。借鉴国际通行规则，对外商投资试行准入前国民待遇，研究制订试验区外商投资与国民待遇等不符的负面清单，改革外商投资管理模式。对负面清单之外的领域，按照内外资一致的原则，将外商投资项目由核准制改为备案制（国务院规定对国内投资项目保留核准的除外），由上海市负责办理。

The Plan also puts forward that free trade zone is required to seek and establish the management model of negative list. By reference to the internationally-accepted norms, the free trade zone shall put into trial use the pre-establishment national treatment for foreign investment, research and prepare the negative list for fields in which foreign investment does not conform to the national treatment in the pilot and reform the management model on foreign investment. For the fields excluded from the negative list, changing the approval system of foreign investment project to filing system (except the domestic projects subject to approval by the State Council) shall be handled by Shanghai Municipality according to the principle of equity for domestic and foreign funds.

[Top](#)

## 投资动态

### INVESTMENT DEVELOPMENTS

- 四川省商务厅发布《关于下放部分外商投资审批管理权限有关事宜的通知》（来源：四川省商务厅，2013年9月5日）

**Sichuan Provincial Department of Commerce Issues Circular on the Matter Relating to Delegating Partial Administrative Power for Examination and Approval of Foreign Investment (Source: www.sccom.gov.cn, Sep 5, 2013)**

2013年9月3日，四川省商务厅发布《关于下放部分外商投资审批管理权限有关事宜的通知》（《通知》）。

On September 3, 2013, the Sichuan Provincial Department of Commerce issued the Circular on the Matter Relating to Delegating Partial Administrative Power for Examination and Approval of Foreign Investment (the "Circular").

《通知》规定，按国家专项规定和宏观调控政策应由四川省商务厅批准的，市（州）商务主管部门应按法律法规和产业政策进行初审后报四川省商务厅审批；外商投资房地产企业审批及备案工作，严格按照商务部《关于做好外商投资房地产业备案工作的通知》等规定办理；市（州）商务主管部门要严格按照法律、法规及有关规定依法审批，提高外资审批工作水平。

According to the Circular, if the approval of the Sichuan Provincial Department of Commerce is required by the State's special regulations and macro-control policy, the competent commerce department of a city (autonomous prefecture) shall, according to laws, regulations and industrial policies, conduct the preliminary review and then report to the Sichuan Provincial Department of Commerce for examination and approval; the examination, approval and filing of foreign-invested real estate enterprises shall be handled in strict accordance with the Circular on Proper Handling of the Filing of Foreign Investment in the Real Estate Industry issued by the Ministry of Commerce and other regulations; the competent commerce department of a city (autonomous prefecture) shall, in strict accordance with laws, regulations and the relevant provisions, perform examination and approval, enhancing the level of examination and approval of foreign investment.

[Top](#)

- **河南郑州港区将可直接审批外商投资项目（来源：河南日报，2013年9月24日）**  
**Harbor District of Zhengzhou City in Henan Province May Directly Examine and Approve the Foreign Investment Projects (Source: Henan Daily, Sep 24, 2013)**

9月23日，从河南省商务厅获悉，为支持郑州航空港经济综合实验区发展，河南省商务厅出台五项措施，从推介招商、招大引强、贸易便利、下放审批、举办展会等方面加大对航空港区建设的支持力度。

On September 23, according to the Henan Provincial Commerce Department ("HPCD"), in order to support the development of Comprehensive Experimental Zone for Airport-based Economy in Zhengzhou City, it introduced five measures for increase of the support for the construction of harbor district involving introduction, investment attraction, introduction of powerful objects, trade facilitation, delegation of power of examination and approval to the lower level and exhibition holding.

据河南省商务厅厅长焦锦淼介绍，为进一步提高航空港区投资贸易便利化，河南省商务厅将进一步下放审批权限，赋予郑州航空港经济综合实验区省辖市级审批权限。这意味着，航空港区将可直接审批外商投资项目。

According to the introduction from Jiao Jinmiao, the Director-General of the HPCD, in order to further improve the facilitation of investment and trade in harbor district, HPCD will further delegate the provincially administered municipal power of examination and

approval to Comprehensive Experimental Zone for Airport-based Economy in Zhengzhou City. It means that the harbor district may directly examine and approve the foreign investment projects.

为了更好地推动这项工作，河南省商务厅会积极与商务部沟通，将航空港区作为单独统计单位，单独发证。对于区内重大项目，开通“绿色通道”，推动项目尽快落地。河南省商务厅将充分发挥境内外客商资源多、联络渠道广的优势，积极向境内外知名商协会、大型跨国公司和战略投资者推介郑州航空港经济综合实验区。

In order to better carry out the work, HPCD will actively communicate with the Ministry of Commerce, to treat the harbor district as a separate statistical unit and to obtain the certificate separately. "Green access" will be available to significant projects in the district, to promote the projects to enter into operation as soon as possible. HPCD will take the best use of advantages, including the abundant resources of domestic and foreign travelling traders, and extensive communication channels to recommend Comprehensive Experimental Zone for Airport-based Economy in Zhengzhou City to domestic and foreign famous business association, large multinational corporations and strategic investors.

[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、莫斯科、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, Moscow, 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 and 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.