



华一法律资讯

Huayi Newsletter

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外商投资类
Foreign Investment

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- 2、《中华人民共和国海关关于执行〈中国—巴基斯坦自由贸易区原产地规则〉的规定》（海关总署第 139 号令）
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- 3、《中华人民共和国海关进出口货物报关单修改和撤销管理办法》（海关总署第 143 号令）
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- 4、《外国投资者对上市公司战略投资管理办法》（商务部、中国证监会、国家税务总局、国家工商总局、国家外汇管理局令 2005 年第 28 号）
2005 年 12 月 31 日发布，2006 年 1 月 31 日实施
- 5、《〈外商投资商业领域管理办法〉的补充规定》（中华人民共和国商务部令 2005 年第 30 号）
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- 6、《中国银行业监督管理委员会外资金融机构行政许可事项实施办法》（中国银行业监督管理委员会令 2006 年第 4 号）
- 7、《〈外商投资电影院暂行规定〉补充规定二》（国家广播电影电视总局令第 51 号）
2006 年 1 月 18 日予发布，自 2006 年 2 月 20 日起施行。
- 1.Administrative Provisions on the Registration of Companies' Registered Capital
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- 2.Decree No.139 of the General Administration of Customs of the People's Republic of China, Promulgating the Regulations of the Customs of the People's Republic of China on Implementing the Rules of Origin for China-Pakistan Free Trade Area
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- 3.Administrative Measures for Modifying and Revoking the Import/Export Goods Declaration Forms of the Customs of the People's Republic of China
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- 4.Measures for the Administration of Strategic Investment in Listed Companies by Foreign Investors
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- 5.Supplementary Provisions on the Measures for the Administration of Foreign Investment in Commercial Fields
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- 6.Measures of China Banking Regulatory Commission for the Implementation of Administrative Licensing Items Concerning Foreign-funded Financial Institutions.
Promulgated on 1.12.2006. Being effective on 2.1.2006.
7. Supplementary Provisions II to the Interim Provisions on Investment in Cinemas by Foreign Investors
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8. Notice of the State Administration for Industry and Commerce on Implementing the Implementation Opinions on Some Issues concerning Law Application for the

- 8、《国家工商行政管理总局、商务部、海关总署、国家外汇管理局关于印发<关于外商投资的公司审批登记管理法律适用若干问题的执行意见>的通知》（国家工商行政管理总局、商务部、海关总署、国家外汇管理局 2006 年第 81 号）
2006 年 4 月 24 日发布并实施。
- 9、商务部关于办理外商投资企业《国家鼓励发展的内外资项目确认书》有关问题的通知（商务部 2006 年第 201 号）
2006 年 4 月 29 日发布并实施。
- 10、《关于外商投资举办投资性公司的补充规定》（中华人民共和国商务部令 2006 年第 3 号）
- 11、《建设部、商务部、国家发展和改革委员会等关于规范房地产市场外资准入和管理的意见》（建设部、商务部、国家发展和改革委员会 2006 年 171 号）
2006 年 7 月 11 日颁布并实施。
- 12、《外国保险机构驻华代表机构管理办法》（中国保险监督管理委员会令 2006 年第 5 号）
2006 年 7 月 12 日公布，自 2006 年 9 月 1 日起施行。
- 13、《中外合作职业技能培训办学管理办法》（中华人民共和国劳动和社会保障部令 第 27 号）
- 14、《关于外国投资者并购境内企业的规定》（商务部 国务院国有资产监督管理委员会 国家税务总局 国家工商行政管理总局 中国证券监督管理委员会 国家外汇管理局令 2006 年第 10 号）
2006 年 8 月 8 日予以公布，自 2006 年 9 月 8 日起施行
- 15、《合格境外机构投资者境内证券投资管理办法》（中国证券监督管理委员会 Administration of Examination and Approval and Registration of Foreign-funded Companies
9. Notice of the Ministry of Commerce about the Relevant Matters on Issuing Confirmation Letters on Domestic and Foreign-funded Projects Encouraged by the State for Foreign-funded Enterprises
Promulgated and being effective on 4.29.2006.
10. Supplementary Provisions on the Establishment of Investment Companies by Foreign Investors
Promulgated on 5.26.2006. Being effective on 7.1.2006.
11. Opinions of the Ministry of Construction, the Ministry of Commerce, National Development and Reform Commission, the People's Bank of China, the State Administration for Industry of Commerce and the State Administration of Foreign Exchange on Regulating the Access to and Administration of Foreign Investment in the Real Estate Market
Promulgated and being effective on 7.1.2006.
12. Measures for the Administration of Foreign Insurance Institutions' Representative Offices in China
Promulgated on 7.12.2006. Being effective on 9.1.2006.
13. Measures for the Administration of Chinese-foreign Cooperative Education on Occupational Skills Training
Promulgated on 7.26.2006. Being effective on 10.1.2006.
14. Interim Provisions on the Takeover of Domestic Enterprises by Foreign Investors
Promulgated on 8.8.2006. Being effective on 9.8.2006.
15. Measures for the Administration of Securities Investment within the Borders of China by Qualified Foreign Institutional Investors
Promulgated on 8.24.2006. Being effective on 9.1.2006.

会、中国人民银行、国家外汇管理局令
2006 年第 36 号)

2006 年 8 月 24 日予公布, 自 2006 年 9
月 1 日起实施

16、《中华人民共和国海关〈中华人民
共和国与智利共和国政府自由贸易协
定〉项下进口货物原产地管理办法》(中
华人民共和国海关总署令第 151 号)

2006 年 8 月 30 日予公布, 自 2006 年 10
月 1 日起施行。

17、《商务部外商投资企业投诉工作暂
行办法》(中华人民共和国商务部令 2006
年第 2 号)

2006 年 9 月 1 日予以公布, 自 2006 年
10 月 1 日起施行。

18、《中华人民共和国外资银行管理条
例》(中华人民共和国国务院令第 478
号)

2006 年 11 月 11 日予公布, 自 2006 年
12 月 11 日起施行。

19、《中华人民共和国外资银行管理条
例实施细则》(中国银行业监督管理委
员会主席令 2006 年第 6 号)

2006 年 11 月 24 日予公布, 自 2006 年
12 月 11 日起施行。

20、《外商投资商业领域管理办法补充
规定(二)》(中华人民共和国商务部
令 2006 年第 22 号)

自 2006 年 12 月 1 日起施行。

16. Decree No.151, 2006 of the General
Administration of Customs of the People's
Republic of China, Promulgating the
Measures of the Customs of the People's
Republic of China for Administration of the
Origins of Imported Commodities under the
Agreement between the Governments of the
Republic of Chile and the People's Republic
of China on Free Trade Area
Promulgated on 8.30.2006. Being effective
on 10.1.2006.

17. Interim Measures of the Ministry of
Commerce for the Work Relating to the
Complaints of Foreign-funded Enterprises
Promulgated on 9.1.2006. Being effective on
10.1.2006.

18. Regulation of the People's Republic of
China on the Administration of
Foreign-funded Banks
Promulgated on 11.11.2006. Being
effective on 12.11.2006.

19. Detailed Rules for the Implementation of
the Regulation of the People's Republic of
China on the Administration of
Foreign-funded Banks
Promulgated on 11.24.2006. Being effective
on 12.11.2006.

20. Supplementary Provisions on the
Measures for the Administration of Foreign
Investment in the Commercial Sector (II)
Being effective on 12.1.2006.



二、新法摘要

II Summary Of New Regulations

1. 《关于外商投资的公司审批登记管理法律适用若干问题的执行意见》的通知

摘要:

《执行意见》为外商投资的公司审批登记管理法律适用的相关问题提供了指导性意见。该意见对外商投资的公司做出了一些新的规定如对外商独资兴办的一人有限公司不再做人数上的限制；外国投资者的主体资格证明或身份证明的公证认证：应经所在国家公证机关公证并经我国驻该国使（领）馆认证，香港、澳门和台湾地区投资者仅需提供当地公证机构的公证文件。

简评:

《执行意见》对外商投资公司的组织机构、设立形式、登记申请期限、审批和登记时需要提交的文件、出资方式、办事机构的地位、海关和外汇管理等问题提出了明确而具体的意见，使外商投资审批登记管理与修订后的《公司法》和《公司登记管理条例》得以衔接。

2、《关于外国投资者并购境内企业的规定》

摘要:

该规定是在《外国投资者并购境内企业暂行规定》的基础上进行的修改和细化。总则规定中明确了外国投资者并购境内企业存在两种情况——股权并购或资产并购，提出了并购应遵守的法律法规及相关政策；对并购涉及到的法律程序进行了明确规定，除首章总则和末章附则外，主要包括外国投资者并购境内企业的基本制度、审批与登记程序、跨境换股规定、反垄断审查等内容。

1、Implementation Opinions on Certain Issues Concerning the Application of Law Governing the Administration of Examination, Approval and Registration of Foreign-invested Companies

Summarize

The Implementation Opinions provide the guiding opinions on the issues concerning the application of law governing the administration of examination, approval and registration of foreign-invested companies. It makes some new regulations. For instance, there is no limitation on the number of one-person limited company established by solely foreign-invested company; the notarization and authentication of the subject qualification certificate or identity certificate of a foreign investor should be subjected to the notarization of a notary agency of the country in which the foreign investor is located and should be subjected to the authentication of the Chinese embassy (consulate) stationed in this country.

Brief comment

The Implementation Opinions have provided some clear and specific opinions on series of issues such as the forms of establishment, documents required for the approvals and registrations, methods of capital contribution, organizational structure of foreign-invested companies, application period for registrations, supervision of the capital contribution, domestic investments, the position of representative office, administrations of customs and foreign exchange which involve capital contributions.

It combines the administration of examination, approval and registration of foreign-invested companies with the amended Company Law and the Regulations on the Administration of Company Registration .

2、Provisions on the Takeover of Domestic Enterprises by Foreign Investors

Summarize

Based on Temporary Provisions on the Takeover of Domestic Enterprises by Foreign Investors, 2003, this provision made

根据该规定，外国投资者跨境换股应报送商务部审批；境内公司在境外设立特殊目的公司，应向商务部申请办理核准手续。

另外，《规定》中首次引入了尽职调查的制度，要求“外国投资者以股权并购境内公司，境内公司或其股东应当聘请在中国注册登记的中介机构担任顾问”。

简评：

该规定反映出我国政府对外资并购境内企业和中国企业走向境外资本证券市场的强烈支持，对外资并购和中国企业境外上市确立了比较全面并且易于操作的制度和审批程序。此外，该《规定》规定了“特殊目的公司”制度以及与之相配套的以股权做支付手段的操作路径，对上市公司、并购市场及相关企业都将产生重要影响。

some adjustments and detailing. The general provision defines takeover of a domestic enterprise by a foreign investor means that the foreign investor purchases by harmonizing the equities of the shareholders of a domestic non-foreign-funded enterprise or subscribing to the increased capital of a domestic company. Besides the general and supplementary provisions, other provisions mainly contain examination, approval and register, equity-payment-based takeover of domestic companies by foreign investors, conditions for equity-payment-based takeover, application documents and procedures, special provisions on special-purpose companies, antitrust review, etc. .

According to the Provisions, to set up a special-purpose company abroad, an overseas company should apply to the MOFCOM for going through the examination and approval formalities.

Especially, the provisions firstly introduce into“takeover consultant”, for an equity-based takeover of a domestic company by a foreign investor, the overseas company or its shareholders should hire an intermediary institution registered within China to serve as a consultant.

Brief comment:

We can see that the Chinese government expresses strong support and legislative requirement in this document for the takeover of domestic enterprises by foreign investors and Chinese enterprises' entrance into foreign security market. The provision build up easy operated systems and approval procedures for the takeover of domestic enterprises by foreign investors and Chinese enterprises' entrance into foreign security market.

In addition, the “special purpose company” system and relative operating path by sharing payment will have great and important impact on listed companies, merger market and related enterprises.



三、外商投资信息

1、石油零售业将向外商开放

从 2007 年开始，石油零售业将向本土和外国投资者开放。从 2007 年 1 月 1 日起，将允许国内外的投资者向加油站提供汽油等其它油类产品，这将实现中国在 5 年前加入 WTO 时所作出的相关承诺。

石油的零售业一直以来被两大国有企业（中石油和中石化）所垄断，在新规定下，一些大型的跨国公司如 BP, Exxon Mobil 和 Total 将在汽油，柴油和煤油领域进行投资。此次开放将带来一些新的企业如国有、跨国和私人企业，推进和限制油产品的两大原则也将促进市场定位竞争，提升品牌意识和提高服务质量。

据预测，石油市场的开放将促进石油产品的多样化和能源安全，同时最终受益的也将会是消费者。但是有分析指出，石油零售业对新的投资者来说并不是那么容易。由于零售许可证已经从进出口许可证中分离出来，企业想要进入零售阶段可能有点困难，政府能通过放松石油产品进口来进一步开放市场。

为控制石油零售业，经营者必须要拥有生产许可证或者进口许可证，还需要有存储设备。如果达不到这些要求，他们只能与别的企业合作，如中石化和中石油。

2、外资银行纷纷来华设立分支机构

汇丰集团上个月在中国北方的天津设立了又一个分行，使其成为了在中国拥有最多分支机构的外资银行。另一个在中国大陆拥有较多分支机构的外资银行一

1、Oil Wholesale Market to Open to Foreign Investors

The oil product wholesale market will be open to domestic and foreign investors from 2007, the Ministry of Commerce announced on 12-08,2006. The opening of the wholesale business supplying gasoline and other oil products to filling stations will start on January 1, and fulfills commitments made by China on entry to the World Trade Organization (WTO) five years ago.

The wholesale business has long been monopolized by two State-owned conglomerates China Petrochemical Corp (Sinopec) and China National Petroleum Corp (CNPC), parent of US-listed PetroChina Co. According to the new rules, multinational giants such as BP, Exxon Mobil or Total can invest in the sales of gasoline, diesel and kerosene to retailers. The opening-up will bring in new entities that include State-owned, multinational and private companies.

It is predicted that the two rules on processed and crude oil products would encourage market-oriented competition, enhance branding awareness and improve service quality. What is more, deregulation of the oil market would help diversify oil product supply and facilitate energy security as well as benefit consumers at the end of the service chain. But some industry insiders cautioned that it would not be easy for newcomers to start a wholesale business since the wholesale licence is separated from import and export licences. It may be difficult for companies to enter the wholesale segment. To solve this problem, the authorities should further deregulate the market by easing the grip on oil product imports.

For oil wholesale business, they have to own either an exploration licence or an import licence, plus storage facilities. If companies do not meet these requirements, they can only collaborate with partners such as Sinopec or CNPC.(source:)

2、Foreign banks hurriedly establishing local

东亚银行的分行总数也上升到了 31 间。加上去年新开的 10 个分行，汇丰集团目前在中国大陆也拥有超过 30 个的分行，紧随其后的是开了 5 间分行的渣打银行。其它包括恒生银行和中信银行在内的外资银行今年在中国也设立了更多的分行。渣打银行表示在未来的 18 个月，他们的分行数目将翻两倍。

中国银监会日前表示他们目前已经批准了九家外资银行将他们的中国分行转为在中国大陆注册的合资银行。根据相关的条约，外资银行和本土银行将享受同等待遇，中国将遵守加入 WTO 的承诺允许外资银行为中国公民办理人民币业务。

3、2006 年，广东制造业和服务业快速发展的一年

2006 年，汽车业、化工业、造船业、IT 业和机械制造业已经成为广州制造业的支柱产业。同时，后勤、运输、仓储和邮政业也取得了巨大的发展，服务业的年均增长值将超过 10 亿元。快速发展的制造业和服务业已经成为广东 2006 年经济发展的两大领军产业。

4、广州：外商工会兴起之地

约有 600 多家外商投资的企业已经在广州设立了工会，这其中有一些工会是由全球 500 强中的某一些企业所开设，包括宝洁中国，安利中国，广州松下电器等知名大企业。工会和外商企业的结合在很多领域发挥了积极的作用，如改善管理层和雇员之间的关系，为员工提供培训和娱乐项目等，同时他们还保护了工会成员和企业的合法利益。

branches in China

The Hong Kong and Shanghai Banking Corp. (HSBC) set up another local branch last month in northern China's Tianjin City, making it one of the foreign-funded banks with most local outlets in the country. The Bank of East Asia, another overseas-funded lender with most local subsidiaries on the mainland, opened 13 branches in China this year, raising the total number to 31. With ten newly founded branches last year, the HSBC also has more than 30 local branches in the mainland so far, followed by the Standard Chartered Bank that opened five local branches this year. Other foreign-funded banks, including the Hang Seng Bank and Citibank, have also set up more branches in China last year. The Standard Chartered Bank will double the number of its branches in the coming 18 months.

The China Banking Regulatory Commission (CBRC), the country's banking regulator, announced they has already approved nine foreign-funded banks to transform their Chinese branches into locally incorporated banks registered on the mainland. Under the regulations, China will treat the foreign-funded banks the same as domestic ones, allowing them to conduct Renminbi business for Chinese citizens in line with its commitments to the World Trade Organization.

3 、 Boom year for Guangdong's Manufacturing and Service Sectors

In 2006, auto, together with petro-chemical, ship-making, IT, machinery industries had become pillars of Guangdong's manufacturing. Meanwhile, as the logistics, including transportation, goods storage and mailing, saw rapid development, the annual value added of the service sector is expected to exceed 1 trillion yuan. The booming manufacturing and service sectors are the two strongest engines in Guangdong's economic development in 2006. .

4 、 Guangzhou: Hotbed for rise of trade unions

About 60 percent of the more than 1,000

foreign-invested enterprises there have set up trade unions. Several of the unions are invested in by some of the world's top 500 multinational companies. These include the P&G (China) Investment Co Ltd, Amway China Ltd, etc. Trade unions working with foreign firms have played an effective role doing such things as improving relationships between management and employees and offering training and entertainment programmes for members. They also protect the legal interests of both union members and the enterprises.





四、热点话题

IV Hot Topic

在中国建立合资企业应注意哪些知识产权方面的问题？

随着知识产权在今天以信息为经济活动基础的社会当中越来越重要，企业在进入一个新的商业领域时应该学会如何保护自己。以下是外资公司在中国设立合资企业应该特别注意的事项：

改良和新知识产权

新知识产权将视为合资企业所有，建议在这些问题出来之前双方在合资协议中就这方面的问题事先作出约定。

投资额比例

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When forming a joint venture in China, what are some IP issues that foreign investors should be concerned about?

Because Intellectual Property is becoming more and more important in today's information-based economy, one must protect oneself when entering into new business relationships. Following are some areas that deserve extra attention when setting up a joint venture in China Mainland:

Improved and New Intellectual Property

New IPRs will be regarded as belongings to the Joint Venture, therefore it is recommended to deal with these matters in the joint venture agreement before they become problems.

Investment Capital Contribution

The transfer of technology or IPRs of a foreign investor into a joint venture can serve as a contribution of capital. In the old company law, the transfer can make up a certain percentage of the JV depending on the investment sector of the JV,. Although there are some exceptions, the maximum limit is usually 20%. Now the new company law has no requirement for the rate.

License/Royalty Fees

Licensing or Royalty fees from the transfer of IPRs in a joint venture deserves close attention. In China Mainland, royalties are subject to income withholding tax and business tax. Also, in some sectors, the royalty rate may have a ceiling, such as the 0.3% royalty rate ceiling of sales revenue in the retail sector for the use of a trademark.

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