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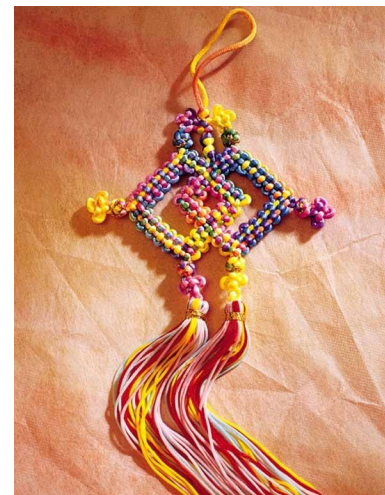
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FOREIGN INVESTMENT / 外商投资

Foreign Investment Industry Catalogue Expected to Be Further Revised 外商投资产业指导目录拟进行新一轮修订

2016年12月7日，国家发展和改革委员会和商务部发布公告，就《外商投资产业指导目录》（“《目录》”）修订稿向社会公开征求意见（“征求意见稿”）。

相较于现行的2015年版《目录》，本次征求意见稿主要有如下几点变化：

1. 改革《目录》结构设置。《目录》原先分为鼓励类、限制类和禁止类三大类，现改为鼓励类和外商投资准入特别管理措施（“负面清单”）两大类，且负面清单进一步分为限制类（主要包括原限制类条目及原鼓励类中有股比、高管要求的条目）和禁止类两类。
2. 继续扩大对外开放。将2015年版《目录》中的93条限制性措施（包括鼓励类有股比要求条目19条，限制类条目38条，禁止类条目36条）减少到62条。服务业重点放开公路旅客运输、外轮理货、资信调查与评级服务等领域；制造业重点放开轨道交通运输设备、汽车电子和新能源汽车电池、摩托车、食用油脂、玉米深加工、燃料乙醇等生产制造领域准入限制；采矿业重点放开非常规油气、贵金属、锂矿等领域外资准入限制。
3. 部分限制或禁止类项目适用内外资一致原则，不再列示。对于部分已适用内外资一致原则管理的项目（如原限制类中的大型主题公园的建设、经营，原禁止类中的高尔夫球场、别墅的建设），不再在征求意见稿中的负面清单中列示。
4. 明确对鼓励类及负面清单重合条目的管理。对于鼓励类目录与负面清单重合的条目，除可继续享受针对鼓励类产业的优惠政策外，同时须遵守相关准入规定。

此外，征求意见稿在关于负面清单的说明中特别指出，关联关系并购（即，《关于外国投资者并购境内企业的规定》中所规定的“境内公司、企业或自然人以其在境外合法设立或控制的公司并购与其有关联关系的境内公司”）需按现行规定办理。据此可见，无论外国投资者投资并购的领域是否属于负面清单，构成关联关系并购的，均需报商务部审批。

On December 7, 2016, the PRC National Development and Reform Commission (“NDRC”) and the PRC Ministry of Commerce (“MOFCOM”) jointly published an announcement to seek public comments on their revised draft of the *Catalogue of Industries for Guiding Foreign Investment* (the “Draft Catalogue”).

Compared with the current catalogue adopted in 2015 (the “2015 Catalogue”), the Draft Catalogue proposed to make the following major changes:

1. Structural Changes to the Catalogue. Under the 2015 Catalogue, industries were sorted into three different categories: the encouraged category, the restricted category and the prohibited category. While under the Draft Catalogue, industries are classified under the encouraged catalogue and the special administrative measures for access of foreign investments (the “Negative List”). The Negative List is further divided into the restricted items (mainly including restricted items and encouraged items subject to limitations on equity holding or requirements on senior management listed in the 2015 Catalogue) and the prohibited items.
2. Expansion of Opening-up Policy. 93 restrictive measures set forth in the 2015 Catalogue (including 19 encouraged items subject to limitations on equity holding, 38 restricted items and 36 prohibited items) are reduced to 62 ones. For service industries, opening-up mainly focuses on such fields as highway passenger transport, ocean shipping tally, credit investigation and rating services. For manufacturing industries, foreign access restrictions on such sectors as track transportation equipment, automotive electronics, batteries of new energy automobiles, motorcycles, edible oil and fats, corn deep-processing, fuel ethanol are lifted pursuant to the Draft Catalogue. For mining industries, restrictions on foreign investment mainly in unconventional oil and gas, precious metals, lithium mines and other fields are proposed to be removed from the 2015 Catalogue.
3. Removal of Several Restricted and Prohibited Items. Several restricted and prohibited items under the 2015 Catalogue (for example, construction and operation of large-scale theme parks and construction of golf courses and villas) are not provided in the Draft Catalogue, as they have already been subject to same restrictions applicable to both foreign and Chinese investments.
4. Clarification on Administration of Encouraged Items That Are also Included in the Negative List. The Draft Catalogue has clarified that while these items are subject to certain foreign investment restrictions, they will continue to enjoy preferential policies available to any encouraged industry.

In addition, the Draft Catalogue especially points out in the notes of the Negative List that acquisitions of affiliated domestic companies by foreign investors in the form of round-trip investment should comply with applicable existing rules (i.e., the *Provisions on the Merger and Acquisition of Domestic Enterprises by Foreign Investors*). This suggests that all foreign related related-party acquisition transactions will still be subject to approval by competent MOFCOM offices regardless of industry sectors.

INSURANCE / 保险

CIRC Plans to Tighten up Administration and Supervision of Equity Interests in Insurance Companies

保监会拟加强对保险公司的股权监管

保险业近两年来保费规模爆炸性增长、二级市场频频举牌，在快速扩张的同时，保险业也暴露出一些新问题，资金对保险牌照狂热追捧，一些投资人进入保险行业，意图仅将保险公司作为融资平台，利用保险业务提供的大量现金流以谋求其他利益。在此背景下，中国保险监督管理委员会于近日对《保险公司股权管理办法》进行修改，并就其征求意见稿（以下简称“征求意见稿”）向社会公开征求意见。

征求意见稿主要规定了投资人资质、股权获得方式、入股资金来源、股东行为等多方面的要求：将保险公司的股东分为三类（即，财务类股东、战略类股东和控制类股东），并针对不同类别的股东分别设立严格的约束标准，设定市场准入负面清单，进一步提高准入门槛，规范投资入股行为；加强对保险公司股权结构和真实股东的穿透式监管，将单一股东持股比例上限由51%降低至1/3，并更加注重对股东行业背景、个人素质、管理团队、既往投资情况等方面的考察评估；加强资本真实性核查，以负面清单的方式明确了不得入股的资金类型。

Insurance industry has experienced rapid expansion in recent years, with explosive growth in terms of premium size and volume of acquisitions involving listed companies' shares in the capital market. In the meantime, a series of problems have also arisen as some investors attempted to use insurance companies with abundant cash flow generated from insurance business as financing platforms to seek questionable and even illegal profits. Under such background, the China Insurance Regulatory Commission recently issued its revised draft of *Administrative Measures for the Equity of Insurance Companies* (the "Draft") to seek public comments.

The Draft mainly stipulates the requirements on qualifications for parties intending to invest in PRC insurance industry, forms of investment that could be adopted by interested investors, source of funds and the shareholders' behaviors. Under the Draft, the shareholders of the insurance companies are categorized into three types: financial investors, strategic investors, and investors seeking to control. In order to tighten up the entry criteria for potential investors and regulate their investment activities, the Draft sets forth strict qualification standards and introduces a negative list in this specific connection. Further, the Draft enhances penetrative supervision and administration of shareholding structure of all insurance companies and their actual shareholders through lowering the cap of single shareholder's equity percentage from 51% to 1/3 and strengthening examination and evaluation of potential investors' industry background, personal quality, management team strength, investment track record and other relevant elements. The Draft also reiterates authenticity verification on source of funds of the investors and adopts a negative list to restrict questionable funding sources that will not allowed to finance proposed investments in insurance companies.

TAXATION / 税法

Environmental Protection Tax to Be Levied in 2018

环保税将于2018年开征

近日，全国人民代表大会常务委员会颁布了《中华人民共和国环境保护税法》（以下简称“《环保税法》”），自2018年1月1日起施行。

《环保税法》以“税负平移”为原则，将现行的排污费征收改成了环保税征缴制度。将排污费的缴纳人作为环保税的纳税人，根据现行排污费项目设置税目，以现行排污费征收标准作为环保税的税额下限，同时增设了上限，即不超过最低标准的十倍。

为减轻企业负担及鼓励企业减少污染物排放，《环保税法》增加了企业减排的税收减免档次：纳税人排放应税大气污染物或者水污染物的浓度值低于规定标准50%的，减半征收环保税；若排放上述污染物的浓度值低于规定标准30%的，减按75%征收环保税。另外，《环保税法》还规定了暂予免征环保税的5种情形。

The Standing Committee of the PRC National People's Congress has recently issued the *Environmental Protection Tax Law of the People's Republic of China* (the "EPT Law"), which will take effect from January 1, 2018.

It is noteworthy that with the issuance of the EPT Law, current pollutant discharge fee system will be replaced by a mandatory fee system and a legally binding obligation under which the scope of taxpayers will be generally consistent with the prevailing provisions for pollutant discharge fee payers and taxable items will be provided according to current items of pollutant discharge fees. The EPT Law has adopted the standard of current pollutant discharge fees as the minimum tax amount payable by the taxpayers, and further added a cap not exceeding ten times of the minimum amount.

In order to alleviate enterprises' tax burden in this regard and encourage them to reduce pollutant discharges, the EPT Law has introduced a reduced tax treatment. If the concentration value of taxable air pollutants or water pollutants discharged by a taxpayer is 50% less than the pollutant disposal standard

stipulated by the national or local authorities, the tax payable could be reduced by half, and if the said concentration is 30% less than the standard, then 25% tax reduction will be applied to the taxpayers. Besides, the EPT Law has also prescribed five circumstances under which an eligible taxpayer may be granted a tax exemption within certain prescribed time period.

INTERNET BUSINESS / 互联网业务

Ministry of Culture Issued New Rules to Further Regulate Online Performance 文化部印发网络表演新规

为加强对近年来逐渐兴起的网络表演活动的监管，文化部于2016年12月2日公布了《网络表演经营活动管理办法》（以下简称“《办法》”），自2017年1月1日起实施。此前文化部、国家新闻出版广电总局和国家互联网信息办公室已分别发布了《关于加强网络表演管理工作的通知》、《关于加强网络视听节目直播服务管理有关问题的通知》及《互联网直播服务管理规定》，此次《办法》的颁布，则是文化部在立法层面上对网络表演行业的进一步规范。

《办法》定义了网络表演及网络表演经营活动。《办法》进一步规定，网络表演经营单位应向省级文化行政部门申请取得网络文化经营许可证。网络表演经营单位应当要求表演者使用有效身份证件进行实名注册，并采取面谈、录制通话视频等有效方式进行核实。网络表演经营单位为境外表演者（包括外国或香港、澳门或台湾地区的表演者）开通表演频道并向公众提供网络表演产品的，应于频道开通前，向文化部申请批准；为境内表演者开通表演频道的，应于表演者开展表演活动之日起10日内，将表演频道信息向文化部备案。

As the online performance activities are growing and gradually thriving in recent years, the PRC Ministry of Culture (the “MOC”) issued the *Administrative Measures for Online Performance Activities* (the “Measures”), effective as of January 1, 2017, to strengthen administration of such activities. The Measures were formulated based on such earlier regulations as the *Circular on Strengthening the Management of Online Performance*, the *Circular on Strengthening the Management of Relevant Issues on Live-streaming Services in Internet Audio-Visual Programs* and the *Provisions on the Administration of Online Live-streaming Services* by the MOC, the PRC State Administration of Press, Publication, Radio, Film and Television and PRC the State Internet Information Office.

The Measures has clearly defined online performance and the business activities of online performance. Under the Measures, operators of online performance should apply for an online culture operating license with the competent provincial cultural authority. Performers are required to register their real names with valid identifications, and operators are responsible for verification of such registrations by means of interview, recording of video call and etc. If an operator intends to establish an online performance channel for foreign performers (*including those based in Hong Kong, Macau, and Taiwan*) to provide their online performance products to the public, the MOC’s prior approval will be required. If an operator looks to host an online performance channel for PRC performers, the relevant channel information should be filed with the MOC within 10 days after the commencement of the performance by the performers.

FIXED ASSET INVESTMENT / 固定资产投资

Administration of Domestic Fixed Asset Investment Projects Relaxed 放宽对境内固定资产投资项目的核准管理

2016年12月14日，国务院公布了《企业投资项目核准和备案管理条例》（国务院令第673号，以下简称“《管理条例》”），于2017年2月1日起施行。为配合《管理条例》的公布实施，国家发展改革委员会拟对《政府核准投资项目管理办法》（国家发展改革委令第11号）进行修订，于同日公布了《企业投资项目核准和备案管理办法（征求意见稿）》，向社会公开征求意见。

《管理条例》规定了对企业在中国境内投资建设的固定资产投资项目（以下简称“项目”）的核准和备案

On December 14, 2016, the PRC State Council released the *Administrative Regulations on Approval and Filing of Enterprise Investment Projects* (the “Regulations”), to be effective since February 1, 2017. To facilitate the implementation of the Regulations, the NDRC concurrently issued the draft *Administrative Measures on Approval and Filing of Enterprise Investment Projects* for public comments with the intention to revise the *Administrative Measures for Government-Approved Investment Projects*.

The Regulations set up the administration model for approval and record-filing of fixed asset investment projects invested and developed within the territory of China by enterprises, which are the first administrative regulation in the area of fixed asset

管理模式，是我国固定资产投资领域第一部行政法规，在转变政府投资管理职能、巩固企业投资主体地位方面具有重大意义。

《管理条例》大幅减少了核准的项目范围，明确相关主管部门仅对关系国家安全、涉及全国重大生产力布局、战略性资源开发和重大公共利益等项目实行核准管理（具体项目范围及核准机关、核准权限依照国务院2016年12月20日公布的政府核准的投资项目目录（2016年本）执行），对其他项目则实行备案管理。除涉及国家秘密的项目外，项目核准、备案均通过投资项目在线审批监管平台实行网上受理、办理、监管和服务。

investment with great significance in transforming government management functions and consolidating enterprises' investor status.

The Regulations significantly reduced the scope of projects subject to government approval requirements. All projects concerning national security issues, national significant productivity layout plans, strategic resource development or major public interests, among others, should be subject to the approval administration (*the specific scope of the projects, the competent approval agencies and their authorities shall be as specified in the Catalogue of Investment Projects subject to Government Approval (2016) published by the State Council on December 20, 2016*), while other projects will only need to go through a record-filing procedure. The approval and filing for all fixed asset investment projects (*excluding those involving state secrets*) are required to be completed through online project regulation and supervision platform administered by the government.

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