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CAPITAL MARKET / 资本市场

China Released Amendments to Rules Governing Strategic Investments by Foreign Investors in Domestic Listed Companies 外国投资者投资境内上市公司相关规定迎来重大修订

2024年12月2日，商务部等六部门联合发布了《外国投资者对上市公司战略投资管理办法》（“新《办法》”），该办法自发布之日起正式施行。这是该法自2005年颁布以来的首次实质性修订，新《办法》显著降低了外国投资者投资境内上市公司的门槛，拓宽了投资渠道，有以下几点值得特别关注：

- 放宽资产要求：**外国投资者（非控股股东）资产要求从境外实有资产总额不低于1亿美元或管理的境外实有资产总额不低于5亿美元，降低至实有资产总额不低于5000万美元或管理的实有资产总额不低于3亿美元；但若其成为控股股东的，原有资产要求不变，即依然为实有资产总额不低于1亿美元或者管理的实有资产总额不低于5亿美元。
- 自然人可作为投资主体：**新《办法》明确，外国投资者的适格主体范围包括具备相应风险识别和承担能力的外国自然人。这是首次明确允许外国自然人直接对境内上市公司进行战略投资，其修改思路与《外商投资法》保持一致，以往仅限“外国法人或其他组织”实施此类投资。
- 跨境换股新路径：**根据《关于外国投资者并购境内企业的规定》等法律法规，新《办法》出台前，通过跨境换股交易取得境内上市公司股份的，支付手段需以境外上市公司或未上市特殊目的公司的股权作为对价，且交易需经商务部批准。新《办法》允许外国投资者使用要约收购和定向发行的方式，以境外非上市公司股权为对价开展交易并报送投资信息，无需事前审批，但仍需按相关规定履行信息报告义务。需要注意的是，以协议转让方式进行的跨境换股交易仍需以境外上市公司的股权作为支付手段。
- 缩短锁定期以及其他修订要点：**(i)投资后锁定期由不低于3年调整为不低于12个月（除非其他规定另有要求）；(ii)新增“要约收购”作为战略投资方式；以及(iii)外国投资者通过“协议转让”和“要约收购”方式取得境内上市公司股份的最低持股比例要求自10%降低至5%，并取消“定向发行”方式的持股比例要求。
- 适用范围扩大：**香港特别行政区、澳门特别行政区、台湾地区投资者，以及定居在国外的中国公民，对上市公司实施战略投资的，以及外国投资者对全国中小企业股份转让系统挂牌公司实施战略投资的，均参照适用新《办法》。

近年来，尤其自2020年《外商投资法》及其配套规则实施后，外商投资监管体系显著转变，从审批制渐趋备案制。《外国投资者对上市公司战略投资管理办法》的修订亦历经多年意见征集与研讨。此次新《办法》基本涵盖此前征求意见稿主要修改内容，整体有利于外国投

On December 2, 2024, the Ministry of Commerce, along with five other departments jointly issued the *Administrative Measures for Foreign Investors' Strategic Investment in Listed Companies 2015* (the “Measures”), which took effect immediately. This marks the first substantial revision of the original measures since they were introduced in 2005. The Measures significantly lower the threshold for foreign investors to invest in domestic listed companies, broaden the available investment channels, and introduced several key changes that are particularly noteworthy:

- Relaxation of Asset Requirements:** The asset requirements for foreign investors (as non-controlling shareholders) have been reduced from having a total actual overseas asset of at least US\$100 million or managing at least US\$500 million in actual overseas assets, to having a total actual asset of at least US\$50 million or managing at least US\$300 million in actual overseas assets. However, if the investor becomes a controlling shareholder, the original asset requirements still apply.
- Natural Persons as Eligible Investors:** The Measures explicitly clarify that the scope of eligible foreign investors includes foreign natural persons who have the ability to identify and bear corresponding risks. This is the first time foreign individuals are allowed to directly make strategic investments in domestic listed companies, aligning with the principles of the *Foreign Investment Law*. Previously, only foreign legal entities and other organizations were permitted to make such investments.
- New Path for Cross-Border Share Swaps:** Under previous regulations such as *Regulations on Foreign Investors' Mergers and Acquisitions of Domestic Enterprises*, cross-border share swap transactions to acquire shares in domestic listed companies required the payment to be made in the form of equity of a foreign-listed company or a non-listed special purpose company, and the transactions needed to be approved by the Ministry of Commerce. The Measures now allow foreign investors to use “tender offers” and “private placements” to conduct transactions with equity in non-listed foreign companies as payment consideration, and to report investment information without prior approval, but will need to fulfil their information reporting obligations in accordance with relevant rules and regulations. However, cross-border share swaps conducted via “agreement transfers” still require payment in the form of equity of a foreign-listed companies.
- Shortened Lock-Up Period and other Key Revisions:** (i) The post-investment lock-up period is adjusted from no less than 3 years to no less than 12 months (unless otherwise stipulated); (ii) “tender offers” is added as a new method of strategic investment; and (iii) the minimum shareholding requirement for foreign investors acquiring shares in domestic listed companies through “agreement transfers” and “tender offers” is reduced from 10% to 5%, and the shareholding requirement for “private placement” is cancelled.
- Expanded scope of application:** the Measures will apply *mutatis mutandis* to strategic investments made by investors from the Hong Kong Special Administrative

投资者投资境内上市公司，有望对资本市场产生积极影响，其实际效果值得期待。

Region, the Macao Special Administrative Region, or the Taiwan region, as well as Chinese citizens residing abroad, and will also apply *mutatis mutandis* to strategic investments made by foreign investors in companies listed on the National Equities Exchange and Quotations.

In recent years, especially since the implementation of the *Foreign Investment Law* in 2020, the foreign investment regulatory framework has undergone significant changes, shifting from an approval-based system to a filing-based system. The revision of the original measures has also undergone several years of public consultations and discussions. The newly released Measures largely incorporate the main amendments from the previous drafts that were open for public opinion. Overall, the revisions are favorable for foreign investors seeking to invest in domestic listed companies and are expected to have a positive impact on the capital markets, with the actual effects yet to be seen.

DATA SECURITY / 数据安全

State Council Issues New Regulations on Network Data Security 国务院出台网络数据安全新条例

2024年9月24日，国务院发布了《网络数据安全条例》（“《网数条例》”），并于2025年1月1日起正式施行。《网数条例》从网络数据处理者的角度整合了现有数据安全相关法规下的相关义务，并在此基础上引入若干新规则。以下要点值得关注：

1. **网络数据处理者的一般义务。**《网数条例》在吸收现有网络数据安全监管规则的基础上，对网络数据处理活动提出新要求，包括：(i)生成式人工智能服务提供者需加强对训练数据的安全管理，并防范数据安全风险；(ii)使用自动化工具收集数据时，需评估对网络服务的影响并避免非法入侵或干扰正常运行；以及(iii)发现安全缺陷或漏洞时需负担通知和报告义务。上述规定反映了技术生态进步对数据安全领域立法的影响，也是企业应关注的合规要点。
2. **细化、优化个人信息处理规则。**《网数条例》第三章规定了网络数据处理者处理个人信息所需遵循的义务，其细化和优化了已有法律规定，包括：(i)强化个人信息处理的告知义务：提出告知义务需“集中公开展示”、“易于访问”和“置于醒目位置”三要求，并明确告知内容应包含“个人信息清单”和“与第三方共享信息清单”；(ii)完善个人信息生命周期管理规范：除“委托处理”和“共同处理”，“对外提供”个人信息亦需通过合同明确权利义务；以及(iii)优化个人信息可携带权规则：增加行使可携带权的前提条件为“具备技术可行性”，确立个人信息的转移方式为“提供访问和获取途径”，并允许就超出合理范围请求按成本收取必要费用。
3. **新增额外重要数据处理规则。**《网数条例》首次从行政法规层面给予重要数据定义，同时《网数条例》新增部分网络数据处理者处理重要数据所

On September 24, 2024, the State Council of China issued the *Regulations on Network Data Security Management* (the “Regulations”), which will take effect on January 1, 2025. The Regulations consolidate the obligations of network data processors under existing data security laws and introduce several new provisions. Key points to note include:

1. **General Obligations of Network Data Processors:** The Regulations introduce new requirements for network data processing activities, including: (i) generative AI service providers must strengthen the security management of training data and mitigate data security risks; (ii) when using automated tools to collect data, the impact on network services must be evaluated to avoid illegal intrusion or disruption; and (iii) notification and reporting obligations are required when security flaws or vulnerabilities are discovered. These provisions reflect the impact of technological advances on data security legislation and are important compliance points for businesses.
2. **Refining Personal Information Processing Rules:** Chapter 3 of the Regulations specifies and optimizes the obligations of network data processors when they handle personal information: (i) *strengthening the obligation to inform*: the notification for personal information processing should be “publicly displayed, easily accessible, and prominently placed”, with content including “a list of personal information and a list of third parties with whom the information is shared”; (ii) *improving management of personal information lifecycle*: in addition to “entrusted processing” and “joint processing”, any “external provision” of personal information must be governed by a contract specifying rights and obligations; and (iii) *optimizing personal information portability*: the transfer of personal data should be “technically feasible”, providing access and retrieval methods, and allow for charging reasonable fees for requests beyond reasonable limits.
3. **New Rules for Processing Important Data:** The Regulations define “important data” for the first time at the

需遵守的额外义务，主要包括合并、分立、解散、破产时向省级以上主管部门报告的义务、与境内其他人员共享重要数据时开展风险评估的义务、以及细化《数据安全法》内的定期风险评估周期，要求至少每年开展一次风险评估。

4. **新增个人信息数据跨境豁免义务。**《网数条例》新增“为履行法定职责或者法定义务”可豁免履行个人信息跨境申报程序的规定，进一步降低企业合规义务。但是，“法”的内涵是否包含部门规章和规范性文件尚需相关部门进一步解释。
5. **新增网络平台服务提供者特殊义务。**《网数条例》新增“网络平台服务提供者”责任主体并规定其需承担的特殊义务，包括对接入的第三方产品和服务的监督义务、以及该等产品和服务侵权时的连带义务等，而大型网络平台服务提供者（即“注册用户5000万以上或者月活跃用户1000万以上，业务类型复杂，网络数据处理活动对国家安全、经济运行、国计民生等具有重要影响的网络平台”提供服务的）还需履行个人信息保护社会责任年度报告等额外义务。但是，现行法律法规并未明确“网络平台服务提供者”的识别标准，有待监管实践进一步明确。

总体而言，《网数条例》整合了网络数据处理者在不同情境下的义务，为中国网络数据治理添砖加瓦。我们建议相关企业积极识别并评估其合规责任，及时调整内部合规措施，以确保符合新规。

administrative regulation level and introduce additional obligations for network data processors when handling important data. These obligations include reporting requirements during mergers, divisions, dissolutions, or bankruptcies, conducting risk assessments when sharing important data with domestic parties, and establishing an annual risk assessment cycle.

4. **Exemptions for Cross-border Personal Information Transfers:** The Regulations introduce a new exemption for cross-border transfers of personal information in cases where such transfers are necessary to fulfill statutory duties or legal obligations, thereby reducing compliance burdens for businesses. However, clarification is needed on whether statutory duties or legal obligations also include those under lowered level government regulations and rules.
5. **New Obligations for Network Platform Service Providers:** The Regulations introduce specific obligations for “network platform service providers”, including overseeing third-party products and services accessed through the platform, and assuming joint liability for infringements by these products and services. Large network platforms (i.e., those with over 50 million registered users or 10 million active users per month, with significant implications for national security and economic activities) must also submit annual reports on personal information protection. The definition of “network platform service providers” is still to be clarified in regulatory practice.

Overall, the Regulations aim to consolidate the obligations of network data processors across different contexts and contribute to the development of China’s data governance framework. Businesses are advised to identify and assess their compliance responsibilities accordingly and adjust their internal policies to align with the new Regulations.

LIFE SCIENCE / 生命科学

China Further Relaxed Foreign Investment Restrictions in Biotechnology and Medical Sectors 生物技术和医疗机构行业外资限制进一步放开

2024年9月7日，商务部、国家卫生健康委、国家药监局联合发布了《关于在医疗领域开展扩大开放试点工作的通知》（商资函〔2024〕568号）（“《试点通知》”），决定在北京、上海、广东自由贸易试验区和海南自由贸易港允许外商投资企业从事人体干细胞、基因诊断与治疗技术的开发和应用，并拟允许在北京、天津、上海等九地设立外商独资医院。

2024年11月1日，为落实《试点通知》中对于外商独资医院的放开规定，国家卫生健康委、商务部、国家中医药局、国家疾控局联合出台了《独资医院领域扩大开放试点工作方案》，允许境外投资者在北京、天津、上海、南京、苏州、福州、广州、深圳和海南九地设立外商独资医院，并明确了设立外商独资医院的具体要求，其中包括：(i)要求投资主体为法人、具有管理经验和先进理念等；(ii)就医院类型和诊疗活动范围出具了负面清单；以及(iii)其他有关运行条件和管理措施方面的规定和要求。上述新政标志我国医疗领域的进一步对外开放。

On September 7, 2024, the Ministry of Commerce, the National Health Commission, and the National Medical Products Administration jointly issued the *Circular on Launching Pilot Program to Expand Medical Sector Opening* (Shang Zi Han [2024] No. 568) (the “Pilot Notice”), which allows foreign-invested companies to engage in the development and application of human stem cells, gene diagnostics, and treatment technologies in Beijing, Shanghai, Guangdong Free Trade Zones, and Hainan Free Trade Port. The Pilot Notice also proposes to allow the establishment of wholly foreign owned hospitals (the “WFOH”) in nine cities, including Beijing, Tianjin, and Shanghai, among others.

On November 1, 2024, to implement the provisions of WFOH outlined in the Pilot Notice, the National Health Commission, Ministry of Commerce, National Administration of Traditional Chinese Medicine, and the National Center for Disease Control jointly issued the *Work Plan for Expanding Pilot Programs in the Wholly Foreign Owned Hospital Field*. The plan allows foreign investors to establish WFOH in nine cities, including Beijing, Tianjin, Shanghai, Nanjing, Suzhou, Fuzhou, Guangzhou, Shenzhen, and Hainan. It also outlines specific requirements for

establishing these hospitals, including: (i) the investor must be a legal entity with management experience and advanced concepts; (ii) a negative list for hospital types and scope of medical activities is provided; and (iii) other operational and management conditions are specified. This new policy framework reflects China's ongoing efforts to liberalize its healthcare sector to attract foreign investment.

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