CHINA
REGULATORY UPDATES

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Q3 2025

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FOREIGN INVESTMENT / 外商投资

SAFE Released a New Policy Package to Facilitate Cross-Border Investment and Financing 国家外汇管理局出台一揽子跨境投融资便利化政策

2025年9月15日，国家外汇管理局发布《国家外汇管理局关于深化跨境投融资外汇管理改革有关事宜的通知》及附件《深化跨境投融资外汇管理便利化政策操作指引》（“**《通知》**”），在外商直接投资、企业跨境融资、资本项目收入支付三个方面发布了九项措施，进一步提升了跨境投融资便利化水平，其中以下三项措施尤其值得境外投资者关注：

1. 取消外商投资企业境内再投资登记：《通知》规定外商投资企业以外汇资本金及其结汇所得人民币资金开展境内再投资时，再投资资金可以直接划至接收方账户，取消了资金接收方办理接收境内再投资基本信息登记及变更登记的要求。此项措施之前已在北京市、上海市、广东省等部分省市试点，《通知》发布后将推广至全国。
2. 允许以外商直接投资项下的外汇利润进行境内再投资：《通知》规定外商投资企业、境外投资者由经办银行审核符合以下条件时可以用外汇利润开展境内再投资：(i)外汇利润合法取得；(ii)划出资金金额与再投资的投资规模或转股对价相匹配；(iii)划出资金金额原则上应不超过外商投资企业最近一期经审计财报中未分配利润的期末金额；以及(iv)被投资企业已完成相应的外汇登记且转股对价合理。
3. 提高科技企业外债便利化额度：《通知》将高新技术、“专精特新”和科技型中小企业的外债便利化额度统一提高至1000万美元，并规定企业在登记时无需再提供经审计的财务报告，这意味着规定相关科技企业可在额度内自主借用外债，不受净资产、“投注差”的限制。针对科技企业的外债便利化额度试点自2018年起就逐步在多个省市开展，《通知》规定全国统一适用1000万美元便利化额度上限，既提升了相关企业融资的灵活度，也便利了境外投资者投资境内科技企业。

On September 15, 2025, the State Administration of Foreign Exchange (or SAFE) released the *Notice of SAFE on Matters Related to Deepening Reforms in Foreign Exchange Administration for Cross-Border Investment and Financing* and the supporting *Operational Guidelines for the Facilitation Policies to Deepen Foreign Exchange Administration for Cross-Border Investment and Financing* (collectively, the “Notice”). The Notice introduces nine measures across three key areas – foreign direct investment (“FDI”), cross-border financing, and payment of capital account income – to further streamline cross-border investment and financing processes. Highlights of the Notice include, among others:

1. Cancelling the registration of domestic reinvestment by foreign-invested enterprises (“FIEs”). The Notice stipulates that when FIEs use their foreign exchange capital or the RMB proceeds obtained from foreign exchange settlement for domestic reinvestment, the reinvested funds may be directly transferred to the recipient's account and the requirement for the fund recipient to complete the basic information registration or subsequent amendment for such reinvestment is no longer needed. This reform exempting the registration requirement, first piloted in select regions including Beijing, Shanghai, and Guangdong, has now been expanded nationwide by the Notice.
2. Permitting domestic reinvestment of foreign exchange profits under FDI. The Notice expressly permits FIEs and foreign investors to use foreign exchange profits for domestic reinvestment, subject to review by the executing bank confirming that the following conditions are met: (i) the foreign exchange profits were lawfully generated and obtained; (ii) the transferred amount matches the scale of the reinvestment or the equity transfer price; (iii) the amount of funds transferred shall, in principle, not exceed the ending balance of the undistributed profits as reflected in the FIE's most recent audited financial statements; and (iv) the enterprise to be invested in has completed the corresponding foreign exchange registration and the equity transfer price is reasonable.
3. Raising the foreign debt facilitation quota for sci-tech enterprises. The Notice uniformly raises the foreign debt facilitation quota for high-tech, “professional, refined, specific and novel”, and technology-based small and medium-sized enterprises (collectively, the “qualified sci-tech enterprises”) to USD 10 million equivalent. Furthermore, audited financial reports are no longer needed for foreign debt facilitation registration. This reform enables qualified sci-tech enterprises to independently borrow foreign debt within the quota, without being subject to the limitations of net asset value or “the difference between the total investment and registered capital”. The pilot program for foreign debt facilitation quota for sci-tech enterprises has been gradually implemented in multiple provinces since 2018. The Notice extends the facilitation quota of up to USD 10 million equivalent nationwide, enhancing financing flexibility of qualified enterprises while also facilitating foreign investors’ investment in domestic sci-tech enterprises.

COMPANY LAW / 公司法

SPC Publicly Solicits Comments on New Judicial Interpretation of the Company Law 最高人民法院就公司法新司法解释公开征求意见

2025年9月30日，最高人民法院发布《最高人民法院关

On September 30, 2025, the Supreme People's Court (or SPC)

于适用〈中华人民共和国公司法〉若干问题的解释（征求意见稿）》（“**《征求意见稿》**”）公开征求意见。《征求意见稿》根据2024年7月生效的修订后的《中华人民共和国公司法》（“**新《公司法》**”，具体分析请见我所《每月立法动态》2023年第四季度刊）对现行有效的五个《公司法》司法解释进行了修正与补充，待正式发布后将全面替代现行的司法解释。《征求意见稿》值得关注的要点如下：

1. 扩大公司关联担保的范围：《征求意见稿》规定(i)公司为控股股东或实际控制人直接或间接控制的公司提供担保及(ii)有限责任公司为他人取得本公司或者其母公司的股权提供担保的，均应参照适用新《公司法》第十五条关于关联担保需经股东会决议的特殊规定。第一种情形将实践中存在的部分“隐性关联担保”纳入监督范围，旨在进一步规制公司向实控人进行的利益输送。第二种情形属于新《公司法》第一百六十三条所规制的财务资助行为，但该条规定仅适用于股份有限公司，有限责任公司能否参照适用尚存在争议，《征求意见稿》实际上为有限责任公司的财务资助行为增设了股东会决议程序要求。

2. 细化估值调整协议（对赌协议）相关规则：《征求意见稿》吸收并完善了《全国法院民商事审判工作会议纪要》（“**《九民纪要》**”）中关于对赌协议效力认定与履行规制的规则，(i)在效力层面，规定与公司签订的对赌协议原则上有效，但与上市公司或者其控股股东、实际控制人订立的对赌协议无效；以及(ii)在履行层面，重申了《九民纪要》中公司未履行减资程序则权利人不得要求公司回购的规定，并进一步明确公司未减资的情况下同样不得要求公司承担对回购的违约或担保责任，但不影响第三人承担约定的担保责任。

《征求意见稿》的规定覆盖了从公司设立到解散清算的整个流程的法律适用，除了以上内容，还对有限责任公司股权转让时间、隐名股东显名要求、上市公司财务资助限制等规则进行了细化规定，在正式发布后预计将会对司法实践产生重要影响，我们也将持续密切关注后续的立法动态和进展。

released *the Provisions of SPC on Several Issues Concerning the Application of the Company Law of the People's Republic of China (Draft for Comments)* (the “Draft Interpretation”) for public comments. Based on the amended Company Law which took effect as of July 1, 2024 (the “New Company Law”, please refer to our 2023 Quarter 4 issue of China Regulatory Updates for detail), the Draft Interpretation revises and supplements the five currently effective judicial interpretations of the Company Law and will replace the existing judicial interpretations once formally issued. Here is the summary of a few key proposed provisions:

1. Expanding the scope of connected guarantees. The Draft Interpretation stipulates that (i) guarantees provided by a company for entities directly or indirectly controlled by its controlling shareholder or de facto controller, and (ii) guarantees provided by a limited liability company (“LLC”) for others to acquire equity in the LLC itself or its parent company, shall be subject to article 15 of the New Company Law requiring a resolution of the shareholders' meeting for connected guarantees. The first scenario brings certain "hidden connected guarantees" under supervision, aiming to further regulate tunneling of benefits from companies to their de facto controllers. The second scenario falls under the financial assistance regulated by article 163 of the New Company Law. But article 163 applies only to companies limited by shares, and whether LLCs can refer to the rule is controversial. The Draft Interpretation effectively sets a shareholders' resolution requirement for financial assistance provided by LLCs.

2. Refining rules on valuation adjustment mechanism (“VAM”, also known as bet-on agreement) agreements. The Draft Interpretation incorporates and refines the rules determining the validity and performance of VAM agreements as set forth in the *Minutes of the National Courts' Civil and Commercial Trial Work Conference* (the “Minutes”). Specifically, (i) in terms of validity, the Draft Interpretation provides that VAM agreements entered into with a company are valid in principle, but VAM agreements concluded with a listed company or its controlling shareholder or de facto controller are void; and (ii) in terms of performance, the Draft Interpretation reaffirms the rule in the Minutes that a company cannot be enforced to repurchase its equity if it has not completed a capital reduction procedure and further clarifies that, absent a capital reduction, the company cannot be held liable for breach of contract or failure to fulfill guarantee obligation. However, it does not affect the enforcement of guarantee obligation assumed by a third party.

The Draft Interpretation covers the application of law across the entire process from company establishment to dissolution and liquidation. In addition to the aforementioned points, the Draft Interpretation also provides more detailed rules on aspects such as the timing of equity transfer in LLCs, requirements for anonymous shareholders to be recognized as registered shareholders, and restrictions on financial assistance of listed companies. The Draft Interpretation is supposed to have an important impact on judicial practice once officially issued and we will continue to monitor and update subsequent developments and progress.

DISPUTE RESOLUTION / 争议解决

Newly Amended Arbitration Law Officially Adopted 《仲裁法》正式修订

2025年9月12日，十四届全国人大常委会第十七次会议表决通过了新修订的《中华人民共和国仲裁法》（“**新《仲裁法》**”）。本次修订是《仲裁法》自1995年施行以来的首次全面修订，新《仲裁法》将于2026年3月1日起正式施行，修订亮点如下：

1. 完善与仲裁相关的保全制度：新《仲裁法》在原

On September 12, 2025, the Standing Committee of the National People's Congress officially adopted the revised PRC Arbitration Law (the “New Arbitration Law”), which represents the first overall amendment since the Arbitration Law's enactment in 1995. The New Arbitration Law will take effect as of March 1, 2026, with key changes outlined below:

1. Refining interim measures in arbitration. The New Arbitration Law expands upon the existing provision on property and evidence preservation by introducing conduct-

有的财产保全和证据保全的基础上，增加了行为保全与仲裁前保全的规定，确认了仲裁与诉讼的保全措施相一致，完成与《民事诉讼法》相关规则的衔接，使当事人的权益在仲裁裁决作出之前能得到更有力的保护。

2. 推进涉外仲裁与国际接轨：随着涉外纠纷的增多，中国仲裁对接国际仲裁通行规则的需求日益迫切，对此，新《仲裁法》在涉外仲裁一章作出了多项修改，主要有：(i)本次修订前，涉外仲裁的特别规定仅适用于“涉外经济贸易、运输、海事纠纷”，新《仲裁法》在此基础上加入“其他涉外纠纷”的兜底条款，使得所有涉外纠纷均可适用特别规定；以及(ii)有限地引入临时仲裁制度，允许涉外海事纠纷或者在自贸区、海南自贸港等国家规定的其他区域内设立的企业之间发生的涉外纠纷采用临时仲裁，选择临时仲裁的当事人可以以中国为仲裁地、选择符合条件的人员组成仲裁庭进行仲裁，临时仲裁应向仲裁协会备案。

3. 其他修订要点：(i)明确线上仲裁作为仲裁方式之一；(ii)增加了对仲裁协议的默示推定：规定在首次开庭前且经仲裁庭提示后当事人对仲裁协议的存在不予否认的，视为存在仲裁协议；以及(iii)确立仲裁庭调查权：规定仲裁庭对于必要证据可以“请求有关方面予以协助”，但具体的协助方式和强制力仍有待实践的进一步考察。

总体而言，本次修订在一定程度上促进了仲裁法与国际通行规则的融通，加强了法院对于仲裁的支持力度，并统一了多项在仲裁实践中存在分歧的规则。新《仲裁法》对仲裁制度的完善有望增强当事人对仲裁的信心，提升各方主体选择仲裁作为纠纷解决方式的意愿。

specific injunctions and pre-arbitration preservation. The expansion ensures the interim measures in arbitration the same as those available in litigation and the rules of arbitration law consistent with the Civil Procedure Law, providing more safeguards for parties' rights before final awards are issued.

2. Advancing alignment of foreign-related arbitration with international rules. In response to the growing number of cross-border disputes and the urgent need for China's arbitration system to align with international arbitration practices, the New Arbitration Law makes multiple revisions to the foreign-related arbitration chapter, including: (i) prior to the amendment, the special provisions for foreign-related arbitration only applied to foreign-related economic, trade, transportation, and maritime disputes. The New Arbitration Law adds a catch-all clause covering “other foreign-related disputes”, thereby extending the applicability of the special provisions to all foreign-related disputes; and (ii) ad hoc arbitration is introduced to a limited extent and applies specifically to foreign-related maritime disputes as well as foreign-related disputes between parties residing in Free Trade Pilot Zones, Hainan Free Trade Port, and other designated areas. Parties choosing ad hoc arbitration may designate China as the seat of arbitration and appoint qualified arbitrators to form an arbitral tribunal. Besides, ad hoc arbitration shall be filed with the arbitration association for record-keeping.

3. Other notable revisions. (i) Online arbitration is formally recognized as a valid form of arbitration; (ii) *introduction of implied acceptance of arbitration agreements*: the New Arbitration Law stipulates that where one party fails to deny the existence of an arbitration agreement upon the arbitral tribunal's inquiry prior to the first hearing, an arbitration agreement is deemed to exist; and (iii) *establishment of arbitral tribunals' power to investigate*: arbitral tribunals are authorized to “request authorities to provide assistance” in collecting necessary evidence under the New Arbitration Law, but ways of assistance and enforcement mechanisms remain to be clarified in further practice.

Overall, the New Arbitration Law makes some progress in aligning with international practices, strengthens judicial support for arbitration, and unifies several rules subject to divergence in practices. These refinements are expected to bolster parties' confidence in arbitration and increase attractiveness of arbitration as a preferred method of dispute resolution.

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