

交通运输部等三部委联合发布《〈外商投资民用航空业规定〉的补充规定（六）》，进一步向香港、澳门服务提供者开放民用航空业。

商务部等五部门下发《关于进一步推进开放型经济新体制综合试点试验的若干意见》，进一步支持在 12 个试点地区推进构建开放型经济新体制综合试点试验。

中国保险监督管理委员会（简称“保监会”）就修改《中华人民共和国外资保险公司管理条例实施细则》等四部规章公开征求意见，将取消申请文件需公证等要求。

国家互联网信息办公室修订《互联网新闻信息服务管理规定》，外资从事互联网新闻信息服务仍然受限。

人民银行正式宣布债券通初期仅开通“北向通”。内地及香港两地基础设施机构联合发文，明确“债券通”托管、结算服务的相关要求。

商务部就《外商投资企业设立及变更备案管理办法》公开征求意见，外国投资者并购境内企业有望适用备案管理。

## 一、进一步向香港、澳门服务提供者开放民用航空业

2017年4月1日，交通运输部、商务部、国家发展和改革委员会（简称“发展改革委”）等三部委联合发布《〈外商投资民用航空业规定〉的补充

规定（六）》（交通运输部令 2017 年第 6 号，简称“《补充规定（六）》”），进一步向香港、澳门服务提供者开放民用航空业。《补充规定（六）》自 2017 年 5 月 1 日起实施。

### （一）背景

2016 年 5 月 31 日，国务院发布《关于在内地对香港、澳门服务提供者暂时调整有关行政审批和准入特别管理措施的决定》（国发〔2016〕32 号），在内地对香港、澳门进一步扩大开放服务业，对香港、澳门服务提供者暂时调整实施相关的准入特别管理措施，允许其在内地从事《外商投资民用航空业规定》规定的空运支持服务，并要求国务院民用航空主管部门制定具体管理办法。

2016 年 7 月 1 日，国务院发布《关于在自由贸易试验区暂时调整有关行政法规、国务院文件和经国务院批准的部门规章规定的决定》（国发〔2016〕41 号），暂时停止实施相关内容，允许外商以独资形式投资设立航空运输销售代理企业；允许外商以独资形式投资设立航空货运仓储、地面服务、航空食品、停车场项目；放宽外商投资通用飞机维修由中方控股的限制；取消外商投资飞机维修承揽国际维修市场业务的义务要求，并要求国务院民用航空主管部门制定相关管理办法。

### （二）法律点评

《补充规定（六）》共涉及两个方面的暂时调整，旨在进一步向香港、澳门服务提供者开发民用

航空业。

《补充规定（六）》允许香港、澳门服务提供者独资投资飞机维修、航空食品、航空货运仓储、停车场和地面服务项目（不包括与安保有关的项目），取消香港、澳门服务提供者设立合资计算机订座系统（CRS）企业的营业许可需进行经济需求测试的要求。

在自由贸易试验区范围内，《补充规定（六）》允许外商以独资形式投资设立航空运输销售代理企业；允许外商以独资形式投资设立航空货运仓储、地面服务、航空食品、停车场项目；放宽外商投资通用飞机维修由中方控股的限制，允许外商以合资合作形式投资通用飞机维修项目；取消外商投资飞机维修承揽国际维修市场业务的义务要求。

### （三）关注要点

国务院在 2017 年 1 月提出放宽服务业、制造业外资准入限制。《补充规定（六）》仅针对香港、澳门服务提供者，该规定实施后能否推动进一步向其他外国投资者开放民用航空业值得关注。

## 二、商务部等五部门联合发文进一步推进开放型经济新体制综合试点试验

2017 年 4 月 7 日，商务部、发展改革委、人民银行、海关总署、质检总局等五部委联合印发《关于进一步推进开放型经济新体制综合试点试验的若干意见》（商政发[2017]125 号，简称“《意见》”），要求各相关省、自治区、直辖市有关部门进一步支持试点地区推进构建开放型经济新体制综合试点试验。

### （一）背景

2015 年 5 月，中共中央、国务院印发实施《关于构建开放型经济新体制的若干意见》，推进新一

轮高水平对外开放。为深入贯彻落实文件精神，2016 年 5 月，商务部会同发展改革委，在济南市、南昌市、唐山市、漳州市、东莞市、防城港市，以及浦东新区、两江新区、西咸新区、大连金普新区、武汉城市圈、苏州工业园区等地设立 12 个试点地区，展开为期 2 年的构建开放型经济新体制综合试点试验工作（简称“试点试验”）。

### （二）法律点评

《意见》共涉及十三个方面的内容，旨在进一步加强顶层设计与基层探索相统筹，推进试点试验取得更大成效。

《意见》进一步支持试点地区探索扩大贸易投资便利化、推进放管服改革，为构建开放型经济新体制积累经验、夯实基础。主要措施包括：创新加工贸易核销管理模式，创新口岸与海关特殊监管区域快速通关模式，建设检验检疫综合改革试验区（国检试验区），加快试点地区信息系统建设和共享，完善港澳服务提供者投资备案方式，支持外资银行设立分支机构、民营资本与外资金融机构共同设立中外合资银行，允许符合条件的境外企业在境内发行人民币债券和跨国企业集团开展跨境人民币双向资金池业务，支持建设边境旅游试验区和跨境旅游合作区，培育沿边旅游开放新支点。

### （三）关注要点

相较于自由贸易试验区是由国务院决定批准，省级政府执行，若干行政审批可能涉及法律法规的暂时调整；试点试验地区则是由商务部、发展改革委等部级部门决定，由市、区级政府执行推动，相关创新措施只能在不调整既有法律法规的框架下提供便利。两者协同并进，皆旨在为构建开放型经济新体制提供可复制推广的经验。

### 三、保监会就修改《中华人民共和国外资保险公司管理条例实施细则》等四部规章公开征求意见，将取消申请文件需公证等要求

2017年4月24日，保监会就《关于修改〈中华人民共和国外资保险公司管理条例实施细则〉等四部规章的决定（征求意见稿）》（简称“《征求意见稿》”）向社会公开征求意见，意见反馈截止时间为2017年6月1日。

#### （一）背景

2015年4月27日，国务院办公厅发布《关于清理规范国务院部门行政审批中介服务的通知》（国办发〔2015〕31号），明确要求除法律、行政法规、国务院决定和部门规章按照行政许可法有关行政许可条件要求规定的中介服务事项外，审批部门不得以任何形式要求申请人委托中介服务机构开展服务，也不得要求申请人提供相关中介服务材料。

为贯彻落实国务院关于清理规范行政审批中介服务事项的要求，保监会决定对《中华人民共和国外资保险公司管理条例实施细则》等四部规章的部分条款予以修改。

#### （二）法律点评

《征求意见稿》共涉及四部规章，分别是《中华人民共和国外资保险公司管理条例实施细则》、《外国保险机构驻华代表机构管理办法》、《保险公司次级定期债务管理办法》和《保险公司董事、监事和高级管理人员任职资格管理规定》，主要修改体现在以下四个方面：

一是取消设立外资保险公司的外国保险公司提交的申请材料应当经所在国家或者地区依法设

立的公证机构公证的要求。

二是取消申请外国保险机构驻华代表机构提交的营业执照、合法开业证明和注册登记证明的复印件必须经其所在国家或者地区依法设立的公证机构公证的要求。

三是取消保险公司募集次级债应当提交法律意见书、公司最近三年经审计的年度财务报告和偿付能力报告以及最近季度末的财务报告和偿付能力报告的要求。

四是取消保险机构报送的外文的董事、监事和高级管理人员任职资格审查材料和其他文件的中文译本应当经中国公证机构公证的要求。

#### （三）关注要点

近年来，行政审批中介服务在促进政府部门依法履职、为企业和群众提供专业技术服务等方面发挥了重要作用，但同时存在着环节多、耗时长、收费乱、垄断性强等问题，在一定程度上消解了行政审批制度改革的成效，加重了企业和群众负担，扰乱了市场秩序。保监会拟对《中华人民共和国外资保险公司管理条例实施细则》等四部规章相关条款进行修改，正是贯彻落实国务院关于清理规范行政审批中介服务事项的要求的具体举措，有助于简化保险业行政审批流程，提升行政审批效率，减轻企业负担，进一步促进保险业的健康发展。

### 四、国家互联网信息办公室修订《互联网新闻信息服务管理规定》，外资从事互联网新闻信息服务仍然受限

为了实施《网络安全法》等规定，国家互联网信息办公室于2017年5月2日修订并公布《互联网新闻信息服务管理规定》（简称“新规定”），并于5月22日公布《互联网新闻信息服务许可管理

实施细则》，外资从事互联网新闻信息服务仍然受限。新规定及其实施细则于 2017 年 6 月 1 日起施行。

### (一)背景

为了规范互联网信息服务，国务院于 2000 年 9 月 25 日公布《互联网信息服务管理办法》，其中要求从事新闻互联网信息服务，在申请经营许可或者履行备案手续前，应当依法经有关主管部门审核同意。

为了规范在我国境内从事互联网新闻信息服务，国务院新闻办公室、原信息产业部于 2005 年 9 月 25 日联合公布《互联网新闻信息服务管理规定》（简称“**原规定**”）。根据原规定“任何组织不得设立中外合资经营、中外合作经营和外资经营的互联网新闻信息服务单位。互联网新闻信息服务单位与境内外中外合资经营、中外合作经营和外资经营的企业进行涉及互联网新闻信息服务业务的合作，应当报经国务院新闻办公室进行安全评估。”

为了保障网络安全等利益，全国人民代表大会常务委员会于 2016 年 11 月 7 日公布首部有关网络安全的综合性法律《网络安全法》。《网络安全法》自 2017 年 6 月 1 日起施行。

为了实施《网络安全法》的规定，国家互联网信息办公室主要对互联网新闻信息服务许可管理、管理体制、互联网新闻信息服务提供者主体责任等进行了修订。新规定的主要修订包括：

一是扩大了“新闻信息”的范围。新规定删除了原规定中将“新闻信息”限于“时政类新闻信息”的规定。按照新规定，“新闻信息”包括有关政治、经济、军事、外交等社会公共事务的报道、评论，以及有关社会突发事件的报道、评论。

二是扩大监管范围。新规定要求通过互联网站、应用程序、论坛、博客、微博客、公众账号、即时通信工具、网络直播等形式向社会公众提供互联网新闻信息服务等形式提供互联网新闻信息服务的，应当取得互联网新闻信息服务许可。

三是对互联网新闻信息服务进行分类许可。新规定将互联网新闻信息服务分为互联网新闻信息采编发布服务、转载服务、传播平台服务。采编发布服务，是指对新闻信息进行采集、编辑、制作并发布的；转载服务，是指选择、编辑并发布其他主体已发布新闻信息的服务；传播平台服务，是指为用户传播新闻信息提供平台的服务。

新规定及其实施细则与《网络安全法》于同日起施行。

### (二)法律点评

新规定及其实施细则沿用原规定有关外资准入的规定，其对外资从事互联网新闻信息服务有以下影响：

首先，任何组织不得设立中外合资经营、中外合作经营和外资经营的互联网新闻信息服务单位。企业法人申请互联网新闻信息服务许可时应披露股权结构是否包含外资成分。申请人除需要提交股权结构图并须逐级追溯到自然人、事业单位以及国有独资公司，并就实际控制人情况作出说明外，还需要提交无外资承诺书。

其次，由于新规定扩大了“新闻信息”的范围，以及扩大了互联网新闻信息服务的监管范围，使得境内外中外合资经营、中外合作经营和外资经营的企业与互联网新闻信息服务单位进行涉及互联网新闻信息服务业务的合作需更加谨慎。

最后，境内外中外合资经营、中外合作经营和



外资经营的企业与互联网新闻信息服务单位进行涉及互联网新闻信息服务业务的合作，应报国家互联网信息办公室进行安全评估，并提交有关拟合作企业的情况以及拟合作业务的情况的材料。如果该等合作可能导致互联网新闻信息服务单位不再符合许可条件的，不予通过安全评估。

### (三) 关注要点

《互联网新闻信息服务许可管理实施细则》并未规定如何判断境内外中外合资经营、中外合作经营和外资经营的企业与互联网新闻信息服务单位进行涉及互联网新闻信息服务业务的何种合作将导致互联网新闻信息服务单位不再符合许可条件，这使得国家互联网信息办公室在进行安全评估时具有较大的自由裁量权。有关安全评估的细则的公布及实施值得关注。

## 五、 人民银行与香港金融管理局正式宣布开展“债券通”，初期仅先开通“北向通”

2017年5月16日，人民银行与香港金融管理局联合发布《关于开展香港与内地债券市场互联互通合作的公告》（以下简称“《联合公告》”），决定同意开展香港与内地债券市场互联互通合作（简称“债券通”）；5月19日，上海清算所、香港金融管理局债务工具中央结算系统（the Central Money Markets Unit, “CMU”）发布《关于为“债券通”提供托管、结算服务的联合公告》；5月31日，人民银行发布《内地与香港债券市场互联互通合作管理暂行办法（公开征求意见稿）》（简称“《意见稿》”），就境外投资者参与“债券通”托管、结算服务的相关要求，向社会公众征求意见。<sup>1</sup>

<sup>1</sup> 有关《意见稿》的介绍，请参考谢青、王辉、卢秉，〈央行就债券通管理暂行办法公开征求意见〉，《君合法律评论》（<http://www.junhe.com/law-reviews/644>），2017年6月14日。《内地与香港债券市场互联互通合作管理暂行办法》后经人民银行于2017

### (一) 背景

做好今年在香港和内地实施“债券通”相关工作，是今年3月份举行的两会及国务院《关于落实〈政府工作报告〉重点工作部门分工的意见》中明确的政策。《联合公告》则是有关主管部门就此政策如何展开、落实所发出的第一份文件。

中国内地的债券市场主要分为银行间债券市场及场内交易债券市场，前者是场外交易（Over the Counter, “OTC”）的批发市场，占了八成以上的债券交易量；而后者以零售为主，交易量也较小，不足一成。中国内地银行间债券市场对外开放的政策始于2015年，而2016年发布并实施的《中国人民银行公告[2016]第3号》（简称“《3号文》”），将符合条件的境外机构投资者范围扩大为：（1）在境外依法注册成立的商业银行、保险公司、证券公司、基金管理公司及其他资产管理机构等各类金融机构；（2）上述金融机构依法合规面向客户发行的投资产品；（3）养老基金、慈善基金、捐赠基金等人民银行认可的其他中长期机构投资者。至今，能投资于中国内地银行间债券市场的境外投资者仍限于《3号文》所定以资产配置需求为主的央行类机构和中长期机构投资者。

### (二) 法律点评

《联合公告》首先明确，债券通初期仅先开通“北向通”，即境外投资者经由香港与内地基础设施机构之间在交易、托管、结算等方面互联互通的机制安排，投资于内地银行间债券市场。未来将适时研究扩展至“南向通”，即境内投资者经由两地基础设施机构之间的互联互通机制安排，投资于香港债券市场。

其次，《联合公告》明确，“北向通”遵守现行

年6月21日正式公布。

内地银行间债券市场对外开放政策框架，投资者和交易工具范围均与人民银行相关公告规定的范围保持一致，且“北向通”没有投资额度限制。这意味着，能通过“北向通”投资中国内地银行间债券市场的境外投资者，仍是《3号文》所定以资产配置需求为主的央行类机构和中长期机构投资者。“北向通”为现行框架下允许投资内地银行间债券市场的境外投资者提供的便利，主要是在境内开户入市模式外，提供境外投资者通过境内外基础设施机构的连通、多级托管的模式，增加了投资于境内银行间债券市场的渠道。

至于上海清算所及CMU所发布的联合公告，则明确：“北向通”所采用的多级托管模式，由上海清算所为总登记托管机构，CMU为次级托管机构；上海清算所登记托管的所有产品均为“债券通”项下的可投资标的；上海清算所、CMU及通过“债券通”投资内地银行间债券市场的境外投资者皆有根据两地监管部门的要求履行信息报告义务等事项。

### (三) 关注要点

“债券通”初期仅开放“北向通”，且基本没有突破现行内地银行间债券市场对外开放的规范框架。“南向通”何时能提上日程，使其作为境内机构“走出去”投资境外债券市场的可选通道；甚至进一步扩大投资者范围，允许境内及境外的一般机构及个人投资者，也能够通过在内地及香港的指定银行开设一个特别的交易账户，利用“债券通”来买卖对方的场外交易债券，值得关注。

## **六、 商务部就《外商投资企业设立及变更备案管理办法》公开征求意见，外国投资者并购境内企业有望适用备案管理**

商务部起草了《外商投资企业设立及变更备案

管理办法（征求意见稿）》（简称“《备案办法（征求意见稿）》”），并于2017年5月27日向社会公开征求意见<sup>2</sup>。《备案办法（征求意见稿）》将外国投资者并购境内企业纳入备案管理的范围。

### (一) 背景

根据《关于外国投资者并购境内企业的规定》，外国投资者并购境内企业应经审批机关批准。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名义并购与其有关联关系的境内的公司（关联并购），应报商务部审批。如果外国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（战略投资），还应根据《外国投资者对上市公司战略投资管理办法》，向国务院证券监督管理机构办理相关手续。

2016年10月1日起，在全国范围内不涉及国家规定实施准入特别管理措施的外商投资企业设立及变更，由审批改为备案管理。但是外资并购设立企业及变更不适用备案管理，仍应按照《关于外国投资者并购境内企业的规定》、《外国投资者对上市公司战略投资管理办法》经审批机关批准。

《备案办法（征求意见稿）》将外国投资者并购境内企业纳入备案管理的范围。

### (二) 法律点评

《备案办法（征求意见稿）》对现行的《外商投资企业设立及变更备案管理暂行办法》进行了多处修订，其中最主要的修订系扩大备案范围，将由并购、战略投资等方式，将非外商投资企业转变为外商投资企业纳入备案范围，应当办理设立备案手续。外国投资者战略投资非外商投资的上市公司、外商投资的上市公司引入新的外国投资者股东

<sup>2</sup> <http://tfs.mofcom.gov.cn/article/as/201705/20170502582832.shtml>

The Ministry of Transport (“**MOT**”) and other two state ministries jointly promulgated the *Sixth Supplementary Regulation on the Regulation of Foreign Investment in the Civil Aviation Industry*, to further open up the civil aviation industry to Hong Kong and Macau service providers.

Five departments including the Ministry of Commerce (“**MOC**”) issued opinions to further promote the Comprehensive Pilot Program and the Trial of the New Open Economic System in 12 areas.

China Insurance Regulatory Commission (“**CIRC**”) solicits public comments regarding the amendment of *Detailed Rules for Implementation of Regulations of the PRC on the Administration of Foreign-invested Insurance Companies* and four other regulations. CIRC will cancel the notarization requirement for application materials.

The State Internet Information Office (“**SIIO**”) amended the *Provisions for the Administration of Internet News Information Services*. However, involvement in internet news information services

by foreign enterprises is still restricted.

The People’s Bank of China (“**PBOC**”) formally announced that the opening of Bond Connect will initially be limited to “Northbound trading”. Both the Mainland and Hong Kong infrastructure institutions issued a joint announcement, specifying the custody and settlement requirements for the Bond Connect.

The Ministry of Commerce (“**MOC**”) solicits public comments regarding the *Administrative Measures for the Record-filing of the Incorporation and Changes of Foreign-invested Enterprises*. Foreign investors taking over domestic enterprises may be subject to record-filing system.

## **1. Further Opening Up of the Civil Aviation Industry to the Hong Kong and Macau Service Providers**

On April 1, 2017, the MOT, the MOC and the National Development and Reform Commission (“**NDRC**”) jointly promulgated the *Sixth Supplementary Regulation on the Regulation of*

*Foreign Investment in the Civil Aviation Industry* (the “**Sixth Supplementary Regulation**”). This regulation will further open up the civil aviation industry to Hong Kong and Macau service providers and will be effective from May 1, 2017.

### **1.1 Background**

On May 31, 2016, the State Council issued the *Decision on the Temporary Adjustments Regarding Relevant Regulatory Approval and Special Permit Management Measures for Hong Kong and Macau Service Providers*, further opening up the Mainland’s service industry to Hong Kong and Macau. This Decision temporarily adjusted the special management measures for permitting Hong Kong and Macau service providers, allowing them to participate in the air freight support services that were regulated under the *Regulations on Foreign Investment in Civil Aviation Industry*. In addition, this Decision required the Civil Aviation Administration of China (“**CAAC**”) to formulate concrete management plans and solutions.

On July 1, 2016, the State Council issued *Decisions on Temporary Adjustments of Relevant Administrative Regulations, the State Council Documents and State Council Approved Regulatory Decisions in the Free Trade Zone*, temporarily suspending the implementation of its content. This Decision exclusively allowed Foreign-invested Enterprises (“**FIEs**”) to invest and establish air transport sales corporations; allowed exclusively FIEs to invest and establish

projects regarding air freight warehousing, ground services, inflight meals, and parking lots; relaxed the restriction that requires shares of foreign-invested general aircraft maintenance to be controlled by the Chinese party; canceled the requirement that foreign-invested aviation maintenance projects have to undertake business from the international maintenance market; and required the CAAC to draft the relevant management solutions.

### **1.2 Legal Review**

The Sixth Supplementary Regulation made temporary adjustments in two respects, aiming to encourage Hong Kong and Macau service providers to develop the civil aviation industry in Mainland China.

This Sixth Supplementary Regulation allows Hong Kong and Macau service providers to invest in aircraft maintenance, inflight meals, air freight storage, parking lots and ground services projects through sole proprietorship (excluding projects relating to security); cancelled the Economic Needs Test that was required for corporations to obtain their charter under the joint venture Computer Reservation System (“**CRS**”) that was set up by Hong Kong and Macau service providers.

Within the pilot Free Trade Zones, the Sixth Supplementary Regulation exclusively allowed FIEs to invest and establish civil aviation sales agency; exclusively allowed FIEs to invest and establish air freight warehousing, ground services,



inflight meals and parking lot projects; relaxed the restriction that requires shares of foreign-invested general aircraft maintenance to be controlled by the Chinese party; and canceled the requirement that foreign-invested airplane maintenance projects have to undertake business from the international maintenance market.

### 1.3 Next Steps

In January 2017, the State Council relaxed the restrictions on permitting foreign enterprises to invest in the service and manufacturing industries. We need to continue to monitor the issues of whether this Sixth Supplementary Regulation was applied only to Hong Kong and Macau service providers, and whether the implementation of such Regulation will also be opened up to other foreign investors.

## 2. Five departments including the Ministry of Commerce issued a joint announcement on promoting the comprehensive pilot programs for a new system of open-economy.

On April 7, 2017, the MOC, the NDRC, the PBOC, the General Customs Administration of China (“GACC”), and the General Administration of Quality Supervision (“AQSIQ”) jointly issued *Several Opinions on Further Promoting the Comprehensive Pilot Program and Trial of the New Open Economic System* (“Opinions”), requiring relevant departments to support this pilot program in building a new system of open-economy in 12 areas.

### 2.1 Background

In May 2015, the Central Committee of the Communist Party of China, and the State Council jointly issued *Several Opinions on Building a New Open-Economy System*, promoting a new phase of high standards for opening-up reforms. To implement the essence of this document fully, the MOC and the NDRC established 12 pilot areas, including Jinan City, Nanchang City, Tangshan City, Zhangzhou City, Dongguan City, Fangcheng Port City, and Pudong New District, Liangjiang New Area, Xixian New District, Dalian Jinpu New District, Wuhan Metropolitan Area and Suzhou Industrial Park, for a two-year pilot program for constructing a new system of open-economy in these areas from May 2016 (“Pilot Program”).

### 2.2 Legal Review

The Opinions set forth 13 requirements, aimed at strengthening the overall plans for the top-level design and ground-level implementation, thereby promoting the effectiveness of the Pilot Programs.

The Opinions support these pilot areas to further explore and expand the convenience of trading and investment, promoting “pipe service” reforms, laying a strong foundation and accumulating experiences for the construction of a new system of open economy. The main measures that have been taken include: innovating the management model of verification in processing trade; creating the rapid custom clearance channel for ports and

custom special supervision areas; building the experimental reform zone for inspection and quarantine (national inspection zone); accelerating the building and sharing of information system in the pilot zones; perfecting the investment record-filing method for Hong Kong and Macau providers; supporting foreign invested banks in establishing domestic branches; supporting private enterprises and foreign-invested financial institutions in jointly establishing Sino-foreign joint venture banks; allowing qualified foreign enterprises to issue RMB denominated bonds domestically and to initiate cross-border RMB two-way cash pool businesses with multinational corporations; supporting the border tourism experimental zones and cross-border tourism cooperation zones; and cultivating new spots for border tourisms.

### 2.3 Next Steps

Compared to the Pilot Free Trade Zone which was ratified by the State Council and implemented by the provincial governments, several regulatory approvals might involve temporary adjustments of the law and regulations. The pilot areas are set by the MOC, the NDRC and other state departments, and executed by the municipal and district-level governments. Any innovative measure that renders assistance shall be subject to the existing legal framework. Working in conjunction with each other, these two intend to provide replicable experiences in building a new system of open economy.

### 3. CIRC solicits public comments regarding Rules on the Administration of Foreign-invested Insurance Companies. CIRC may cancel the notarization requirement for application materials.

On April 24, 2017, CIRC solicits comments from the public regarding the *Amendment of Detailed Rules for Implementation of Regulations of the PRC on the Administration of Foreign-invested Insurance Companies* and other four regulations (“**Draft for Comment**”). This comment solicitation ends on June 1, 2017.

#### 3.1 Background

On April 27, 2015, the General Office of the State Council issued *the Notice on Clearing and Regulating the State Council’s Relevant Administrative Approval’s Agency*, which plainly states that the approval authority cannot require applicants to entrust agencies to provide any service or require applicants to provide any document from the relevant agency, except those clearly stipulated in law, administrative regulations, decisions by the State Council and relevant regulations in accordance to the Administrative License Law.

To implement the State Council mandates concerning the clearing and regulating agency services approved by the administrative agencies, the CIRC decided to amend provisions in four regulations including *Detailed Rules for the Implementation of the Regulations of the PRC on*

*the Administration of Foreign-invested Insurance Companies.*

### **3.2 Legal Review**

The Draft for Comment involves four regulations, which are (1) the *Detailed Rules for the Implementation of the Regulations of the PRC*, (2) *Rules on Administration of Representative Offices of Foreign Insurance Institutions*, (3) *Administrative Measures for Subordinates Term Debts of Insurance Companies* and (4) the *Administration of the Office Qualifications for the Directors, Supervisors and Senior Executives of Insurance Companies*. There are four main aspects to these amendments:

First, it has lifted the requirement that foreign-invested insurance companies' application materials have to be notarized in the legally established notarization office in its resident country or region.

Second, it has lifted the requirement that foreign insurance institutions' domestic branches' Business Permit Certificates, Certificate of Incorporation and Registration Certificates' photocopies have to be notarized in the legally established notarization offices in its resident country or region.

Third, it has lifted the requirement that when raising subordinate debt, insurance companies have to submit a legal opinion; its last three years of financial statements and solvency reports; and most recent quarterly-end financial statements

and solvency reports.

Fourth, it has lifted the requirement that the insurance companies' reports regarding its directors, supervisors and executive managers' qualifications submitted in Chinese (originally written in foreign language) have to be notarized by a Chinese notarization office.

### **3.3 Next Steps**

In recent years, administratively approved agency services have played an important role in promoting governmental compliance with the law and providing technical support for corporations and the public. However, there are also several problems related to abundant and time-consuming procedures, arbitrary charges and a strong tendency to monopolize the market, reducing the effectiveness of the administrative approval system's reforms to a certain extent. Therefore, these problems have increased the burdens on corporations and the public, and disrupted the market order. The amendments that CIRC made with regards to four regulations such as the *Detailed Rules for Implementation of Regulations of the PRC on Administration of Foreign-invested Insurance Companies* are the concrete actions taken to implement the State Council's mandate regarding clearing and regulating administrative approval for agency services. These amendments will facilitate the simplification of administrative approval procedures in the insurance industries, improving the efficiency of the administrative approval

process, reducing the burden on corporations and further promoting the healthy development of the insurance industry.

#### **4 The State Internet Information Office (“SIIO”) amended the Regulations for the Administration of Internet News Information Services. Foreign enterprises are still restricted from involvement in internet news information services.**

To implement *Cybersecurity Law of the PRC*, on May 2, 2017, the State Internet Information Office amended the Regulations for the Administration of Internet News Information Services (“**New Regulation**”) and on May 22, 2017, announced the new *Detailed Rules for the Implementation of Internet News Information Services*. However, foreign enterprises are still restricted from involvement in internet news information services. This New Regulation and its Detailed Rules for Implementation will be in effect from June 1, 2017.

##### **4.1 Background**

To regulate internet information services, the State Council issued the *Regulation on Internet Information Services of the PRC* on September 25, 2000. This Regulation requires those service providers in the business of news internet information to obtain approval from the relevant regulatory authorities prior to obtaining its Business Permit or complying the Record-filing Procedures.

To regulate domestic internet news information services, the Ministry of Information announced the *Regulation on Internet Information Service of the PRC* (“**Original Regulation**”) on September 25, 2005. According to the Original Regulation, “no organization is allowed to establish Sino-foreign joint ventures, Sino-foreign joint ventures and foreign operators of Internet news information services unit. Internet news information service providers and foreign joint ventures, Sino-foreign joint ventures and foreign-owned businesses involved in Internet news information services cooperation, should be reported to the Office of National Internet Information Security Assessments”.

To ensure cybersecurity and other interests, the Standing Committee of the National People’s Congress promulgated the first comprehensive statute, the *Cybersecurity Law of the PRC*, on November 7, 2016. This Cybersecurity Law will be in effect from June 1, 2017.

In addition, for the implementation of Cybersecurity Law and other relevant regulations, the National Internet Information Office amended primarily on licensing for internet news information services, management systems, the duties of internet news information service providers. The New Regulation mainly amended the following:

First, it has expanded the definition of “news information”. This new regulation removed the restriction under the original Regulation that limits

the content of “news information” to “political types of news information”. In accordance to this regulation, “news information” includes reports and comments related to political, economic, military, diplomatic and other social public affairs, and also includes reports and comments regarding social emergencies.

Second, it has expanded the regulatory scope. The service provision requires that internet news information services licenses to be obtained by any entity providing internet news information to the public which includes (but not limited to) websites, Apps, forums, Blogs, Microblogs (twitters), and Wechat Official Accounts, instant message, and live video streaming.

Third, it classified different licenses for various internet news information services. This New Regulation divides internet news information services into different categories, namely editorial publishing services, reprinting services, and communication platform services. Editorial publishing services refer to the collecting, editing, producing and publishing process for news information. Reprinting services refer to selecting, editing and publishing news information services that have already been published by other news providers; communication platform services refer to the services that provide a platform for users to transmit news information.

This New Regulation on Internet Information Service of the PRC and its Detailed Rules and Cybersecurity Law will go into effect on the same

day.

## **4.2 Legal Review**

This New Regulation and its Detailed Rules on Implementation adopted provisions in the Original Regulation regarding foreign enterprises' involvement in internet news services and affect those foreign enterprises in the internet news information service in the following ways:

Firstly, no organization can establish a Sino-foreign joint venture, Sino-foreign contractual joint venture, or foreign-invested internet news information service company. When the business entity applies for a license to provide internet news information services, it should disclose whether its share structure includes any foreign-invested components. In addition to the share structure diagram that traces back to the natural person, institutional organization and wholly state-owned company, the applicant also has to submit explanations regarding the actual controlling person and letter of commitment affirming no foreign enterprise involvement.

Secondly, since the New Regulation has expanded the definition of “news information” and expanded the regulatory scope of internet news information services, this has led to Sino-foreign joint ventures, or Sino-foreign contractual joint ventures and wholly foreign invested enterprises to be more cautious when dealing with internet news information service companies involving internet news information services.



Finally, when Sino-foreign joint ventures, contractual joint ventures or wholly foreign invested enterprises cooperate with internet news information service providers involves news information service businesses, they should report it to State Internet Information Office to have a safety assessment and submit all materials related to the joint venture enterprises or cooperative businesses. If such cooperation might cause internet news information service providers to no longer satisfy the licensing requirements, then it shall fail the safety assessment.

#### **4.3 Next Steps**

The Detailed Rules for the Implementation of Internet News Information Services has not specified how to assess whether the cooperation of Sino-foreign joint ventures, contractual joint ventures or wholly foreign invested enterprises with internet news information service providers is related to internet news information service business and cause the internet news information service providers to no longer satisfy the requisite requirements. This provides State Internet Information Office substantial discretion in making safety assessments. Thus, we need to monitor further announcements and information about the implementation of Detailed Rules on the safety assessments.

### **5 The PBOC and Hong Kong Monetary Authority officially announced the opening of “Bond Connect”, which will be initially limited**

#### **to Northbound trading only.**

On May 16, 2017, PBOC and Hong Kong Monetary Authority jointly issued an *Announcement on the Collaboration in Establishing Mutual Bond Market Access between Hong Kong and Mainland China*, agreed to open this mutual connection and cooperation between the Mainland and Hong Kong bond markets (“**Bond Connect**”). On May 19, the Shanghai Clearinghouse and the Hong Kong Central Moneymarkets Unit (“CMU”) issued a joint announcement regarding the custody and settlement services for the Bond Connect. On May 31, the Central Bank announced the *Interim Measures on Mainland and Hong Kong Bond Market Mutual Connect and Collaboration* (“Draft for Comment”), soliciting public comments regarding the requirements for foreign investors to participate in the Bond Connect’s custody and settlement services.<sup>1</sup>

#### **5.1 Background**

To prepare and facilitate the implementation of the “Bond Connect” in both Hong Kong and Mainland is one of the policy objectives that was specified in the two sessions (NPC & CPPCC) and the State Council’s Advice regarding “Works on the Implementation of the Government’s Work’s Report on the Prioritized Divisions”. This

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<sup>1</sup> For more details regarding the Draft for Comment, please see *Client Briefing – PBOC Solicits Comments for Interim Measures for Administration of Bond Connect*, by XIE Qing (Natasha), Wang Hui, LU Bing, JUNHE LAW REVIEW (<http://www.junhe.com/law-reviews/644>) June 14, 2017. The Interim Measures for Administration of Bond Connect was formally released by PBOC on June 21, 2017.

Joint Announcement is the first document on how the relevant authority should promote and implement this policy objective.

The Mainland China's bond market is divided into the Inter-bank Bond Market and Market-in-the-Field Bond Market. The former market is an over-the-counter ("**OTC**") market, which encompasses more than 80% of the bond trading volume. The latter market is mainly for retail and has a relatively small trading volume, constituting less than 10% of the overall trading volume. The opening-up policy in the Mainland China's Inter-bank Bond Market has been in place since 2015. The PBOC'S No. 3 Announcement [2016] ("**No.3 Bulletin**") that was issued and implemented in 2016, expands the scope of foreign institutional investors that satisfied the relevant requirements to include: 1) financial institutions that were registered and established overseas such as commercial companies, insurance companies, securities companies and fund management companies and other asset management institutions; 2) the investment products that were issued by the above-mentioned financial institutions (in full compliance with law and regulations) to its clients; 3) pension funds, charity funds, and donation funds that other long-term institutional investors were approved by the PBOC. Until now, those foreign investors who could invest in the Mainland China's Inter-bank Bond Market were limited to those medium- to long-term institutional investors or central-bank like institutions for

asset-management purposes specified by the No.3 Bulletin.

## **5.2 Legal Review**

First, the Joint Announcement specified that the Bond Connect will initially be limited to "northbound trading" only. This means that foreign investors will invest in the Mainland China's Inter-bank Bond Market via the infrastructure institutional arrangements for mutual access between Hong Kong and Mainland China regarding trading, custody and settlement. As for "Southbound trading", which refers to domestic investors seeking to invest in Hong Kong's bond market via the infrastructure arrangement between the two places, it will be implemented later on.

Second, the Joint Announcement specified, that "Northbound trading" will comply with the current Mainland Inter-bank Bond Market opening-up policy framework, hence investors and trading tools will be in compliance with those specified by the PBOC. In addition, the "Northbound trading" has no limit as to the investment quota. This implies that, those foreign investors who could invest directly in the Mainland China's Inter-bank Bond Market will still be those specified by the No.3 Bulletin such as central-bank like institutions for asset-management purposes or medium- to long- term institutional investors. "Northbound trading" will facilitate the existing framework that allows foreign investors to invest in the domestic Inter-bank Bond Market. In addition to setting up

a domestic bank account to trade, it also provides foreign investors channels via infrastructure building institutions, multiple custody methods, and added more channels for the investments in the domestic Inter-bank Bond Market.

The Joint Announcement issued by the Shanghai Clearing House and CMU, specified that “the multiple-layered custody method employed by the Northbound trading will be regarded as the primary registered custody institution by the Shanghai Clearing House. CMU will be the secondary custody institution;

All products registered under the Shanghai Clearing House’s custody are investment subject matters under Bond Connect. Shanghai Clearing House, CMU and foreign investors via the Bond Connect seeking to invest in Mainland Inter-bank Bond Market will perform the information reporting obligations required by the relevant regulatory authorities.

### 5.3 Next Steps

The Bond Connect will be limited to “Northbound trading” and operates within the established opening-up framework of the Mainland Inter-bank Bond Market. We need to continue to monitor the issue of when “Southbound trading” will be implemented and be used as a channel that enables domestic institutions to invest in overseas bond markets. Additionally, we need to monitor the expansion of the scope of investors that allows more diversified portfolio investors to

trade bonds in the over-the-market market, via establishing a special trading account in appointed banks in the Mainland and/or Hong Kong.

## 6. The MOC solicits public comments regarding the Administrative Measures for the Record-filing of the Incorporation and Changes of FIEs. Foreign investors taking over domestic enterprises may subject to Record-filing administration.

The MOC drafted *Administrative Measures for the Record-filing of the Incorporation and Changes of FIEs (Draft for Comment)* (“**Record-filing Draft**”), and has started the public comment solicitation process from May 27 2017.<sup>2</sup> This Record-filing Draft will include foreign investors taking over domestic enterprises within the scope of the record-filing administration.

### 6.1 Background

According to the *Interim Provisions on the Takeover of Domestic Enterprises by Foreign Investors*, foreign investors taking over domestic enterprises will obtain permissions from the approval authorities. Domestic companies, corporations and natural persons that use a legally established or controlled companies’ name overseas to take over its related domestic companies (“**acquisition of an affiliate**”), should apply for approval from the Ministry of Commerce. If foreign investors employ a sizable medium- to

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<sup>2</sup> <http://tfs.mofcom.gov.cn/article/as/201705/20170502582832.shtml>

long-term strategic takeover investment to listed companies (“**strategic investment**”), they shall comply with the procedural requirements issued by the Securities Regulatory Institutions of the State Council, in accordance with the *Administrative Measures for Strategic Investment by Foreign Investors in Listed Companies*.

Since October 1, 2016, the establishment and amendment of foreign-invested corporations will be governed by the record-filing management system instead of the prior approval system, except for those special management measures for state-regulated implementation. But for foreign enterprises’ M&A establishing and amending corporations, they will not employ this Record-filing Administration, and will still have to obtain approval from relevant institutions in accordance with the *Provisions on Mergers and Acquisitions of Domestic Enterprises by Foreign Investor*, and *Administrative Measures for Strategic Investment by Foreign Investors in Listed Companies*. The Record-filing Draft will include the foreign investors taking over domestic enterprises within the scope of record-filing administration.

## **6.2 Legal Review**

The Record-filing Draft made several amendments to the *Interim Provisions on the Takeover of Domestic Enterprises by Foreign Investors*. One of the key amendments is to expand the scope of record-filing administration to include non-FIEs transforming to FIEs, such as

by means of M&A or strategic investments. These enterprises should comply with the record-filing procedures. For those foreign investors investing in non-foreign invested listed companies, or those foreign-invested listed companies introducing new foreign investors as shareholders, they should comply with the record-filing procedures 30 days before or after the registration at the securities registration institution.

Basic information changes of FIEs established by M&A as well as foreign investors strategically investing in listed companies have to undertake the record-filing procedure.

When complying with the record-filing procedures for the establishment and amendment of FIEs, the Record-filing Draft added another provision requiring the submission of the FIEs and its foreign investors’ shareholder structure diagram illustrating the actual controlling person. For those involving foreign investors or using shares in overseas companies as a payment method, the Record-filing Measure also requires domestic corporations to submit the Overseas Investment Corporation’s Certificate.

## **6.3 Next Steps**

The Record-filing Draft has not specified whether acquisition of an affiliate will be included within the scope of acceptable record-filing administration. Acquisition of an affiliate is another special form of foreign investors taking over domestic enterprises, which needs approval

from the MOC. In practice, this approval has proven difficult to obtain. We need to continue to monitor this issue of whether the acquisition of an affiliate will be included in the scope of

record-filing administration after the formal issuance and implementation of the Record-filing Measure.

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应于证券登记结算机构证券登记前或登记后 30 日内办理备案手续。相应地，并购设立外商投资企业交易基本信息变更以及外国投资者战略投资上市公司基本信息变更需要办理变更备案手续。

办理外商投资企业设立或者变更备案手续时，《备案办法（征求意见稿）》增加要求提交外商投资企业及其外国投资者最终实际控制人股权架构图，涉及外国投资者以境外公司股权作为支付手段

的，需提供境内企业的《企业境外投资证书》。

### (三) 关注要点

《备案办法（征求意见稿）》并没有明确规定关联并购是否也一并纳入备案管理范围。关联并购属于外国投资者并购境内企业的一种特殊形式，需要报商务部审批，实践中获得商务部的批准难度很大。正式公布及实施后的《备案办法》是否将关联并购纳入备案管理范围值得关注。

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