

# NEWSLETTER

NO.3

Mar 1, 2019 – Mar 31, 2019

## Cross-border Investment Law Monthly

### I. Legislative Developments

#### FOREIGN DIRECT INVESTMENT

##### ● **The National People's Congress passed the Foreign Investment Law**

On March 15, the Second Session of the 13th National People's Congress voted to pass the Foreign Investment Law of the People's Republic of China, which is the first unified law in the field of foreign investment in China. The law will come into effect since January 1, 2020. The Law on Chinese-Foreign Equity Joint Ventures, the Law on Wholly Foreign-Owned Enterprises and the Law on Chinese-Foreign Contractual Joint Ventures will be abolished at the same time. The new law establishes the administrative system of pre-establishment national treatment plus negative list applicable to foreign investment, further expanding opening up, actively promoting foreign investment, and protecting the legitimate rights and interests of foreign investment.

##### ● **The State Council canceled and decentralized a batch of administrative licensing items**

On March 6, the State Council issued the "Decision on Cancellation and Decentralization of a Batch of Administrative Licensing Items" (Guo Fa [2019] No. 6), canceling 25 administrative licensing items and decentralizing the management level of 6 administrative licensing items. The "approval of the overall development plan for the external cooperation project of oil and natural gas (including coalbed methane)" was changed to filing; the "pre-approval of the name (including the names of the enterprises, enterprise groups, individual industrial and commercial households, and farmers' professional cooperatives)" was changed to self-declaration by the enterprise (including individual industrial and commercial households and the farmers' professional cooperatives) and approval by the market supervision department when the enterprise is registered.

##### ● **The State Council revised the Regulation on the Implementation of the Law on Chinese-Foreign Equity Joint Ventures**

The State Council promulgated the Decision on Amending Certain Administrative Regulations (Order No. 709 of the State Council), deleting the third and fourth

paragraphs of Article 43(2) of the Regulation on the Implementation of the Law on Chinese-Foreign Equity Joint Ventures. The technology transfer agreements entered into by joint venture no longer have to comply with the following provisions: (3) The term of the technology transfer agreement generally does not exceed 10 years; (4) After the expiration of the technology transfer agreement, the technology importer has the right to continue to use the technology. The decision will take effect on March 2.

- **The State Council revised the Regulation on the Administration of Import and Export of Technologies**

The State Council promulgated the Decision on Amending Certain Administrative Regulations (Order No. 709 of the State Council), amending the Regulation on the Administration of Import and Export of Technology by deleting the following contents: "The transferee of the technology import contract uses the technology provided by the transferor in accordance with the contract. If the technology infringes the lawful rights and interests of others, the transferor shall bear the responsibility." "In the period of validity of the technology import contract, the improvement of technology belongs to the party that makes improvement." And Article 29 that a technology import contract shall not contain seven kinds of restrictions is deleted.

- **SAFE revised the Regulation on the Management of Transnational Corporation's Concentrated Operation of Cross-border Funds**

On March 18, the State Administration of Foreign Exchange announced the revised Regulation on the Management of Transnational Corporations' Concentrated Operation of Cross-border Funds, and implemented macro-prudential management of foreign debt and overseas lending. Multinational corporations can concentrate foreign debt quotas and/or overseas lending quotas of domestic member companies, and carry out foreign debt borrowing and/or overseas lending on their own in accordance with commercial practices within the scale of the concentrated quota. Meanwhile, the foreign debt and overseas lending registration are greatly simplified, and the foreign exchange income settlement and payment under capital projects are facilitated.

- **Shanghai introduced 62 specific measures to support the deepening reform and innovation in the free trade zone**

The Shanghai Government promulgated the "Implementation Plan for the Measures of Supporting the Deepening Reform and Innovation in the Free Trade Pilot Zone", which came into effect on March 31. The Plan proposed 62 specific measures from the following five aspects: optimizing the investment environment, improving the level of trade liberalization and facilitation, promoting opening and innovation in finance, innovating human resources mechanism, and improving organization and implementation. The measures include canceling the requirement of foreign

technical personnel in foreign-invested construction engineering design enterprises in Shanghai; canceling the restriction that foreign-invested talent intermediaries must have more than three years of experience in the corresponding fields; and the wholly foreign-owned construction enterprises in Shanghai undertaking Chinese-foreign joint construction projects in the city not subject to the restriction of the proportion of investment by Chinese and foreign parties in the construction project.

## OVERSEAS DIRECT INVESTMENT

- **In order to stop internal divergence, the EU seeks to speed up the negotiation process with China Investment Agreement**

On March 7, the Financial Times reported that the EU hopes to reach a bilateral investment agreement with China next year. The EU is working hard to promote a more coordinated approach by all member states to China to stop the growing divergence within the EU. The EU will use the China-EU Summit to be held next month to advance the negotiations on bilateral investment agreements, which will detail industries open to foreign companies. (Ministry of Commerce)

- **The European Commission issued the EU-China Strategic Outlook, proposing that member states should effectively implement the Regulation on Screening of Foreign Direct Investment**

On March 12, the European Commission issued the EU-China Strategic Outlook, and proposed "10 actions" to the European Executive Committee, the European Parliament and other decision-making bodies. Action 10 says that to detect and raise awareness of security risks posed by foreign investment in critical assets, technologies and infrastructure, Member States should ensure the swift, full and effective implementation of the Regulation on Screening of Foreign Direct Investment.

- **The Swedish government may legislate to exclude companies that may jeopardize Swedish 5G security**

On March 14, according to the Swedish Corren website, Huawei has been banned from participating in 5G construction by several Western countries. The Swedish government has proposed that the security of the upcoming 5G network must be further regulated by law. Swedish Minister of Digitalization recently said that the purpose of legislation is to exclude components, suppliers and operators that are not sufficiently safe and may endanger Swedish security, but did not name Huawei or China. (Ministry of Commerce)

- **The EU framework for screening foreign direct investment will come into effect in April**

The EU framework for screening foreign direct investment (REGULATION (EU) 2019/452) was published on 21 March 2019. It enters into force on 10 April 2019 and

applies across all Member States from 11 October 2020. The Framework is the first EU measure to screen FDI on grounds of security and public order.

- **Italy passes the new bill to allow the government to review 5G transactions**

On March 25, Italian President Sergio Mattarella signed an update on the country's Golden Power Law to officially include 5G technology-based broadband communication services into the country's strategic assets. The government may review, exercise veto of or impose compulsory transactional conditions on or modify the terms of specific actions or transactions. This will allow the government to "control" participants entering its 5G telecom market in the next few years.

## II. Industry Major News

### FOREIGN DIRECT INVESTMENT

- **Austrian food processing enterprises increase investment in China**

On March 20, Austrian Vienna Daily reported that the Austrian food processing company Agrana recently invested 22 million euros in Changzhou, a city in the Yangtze River Delta, to build a new fruit processing and sugar factory, which will be its second factory established in China. The first one is in Hebei Province and has reached the capacity ceiling. (Ministry of Commerce)

- **The first 2 foreign private equities were eligible for investment advisor**

Recently, Neuberger Berman and Fullerton Fund Management officially obtained the qualification of providing investment advising service in China. They are the first foreign-invested institutions to obtain this qualification, which officially opens the door to cooperate with Chinese banks. (Sina Finance)

- **The first foreign-controlled joint venture bank was established**

On March 21, Bank of Beijing issued a notice stating that the bank intends to establish a joint venture bank company with ING Bank N.V. The registered capital of the proposed joint venture bank is RMB 3 billion. The Bank of Beijing holds 49% equity shares and ING Bank N.V. holds 51% equity shares. ING Bank N.V. is a wholly-owned subsidiary of ING Group. (Yicai)

- **The establishment of the first foreign-owned pension insurance company was approved**

On March 27, the China Banking and Insurance Regulatory Commission announced the three applications of foreign-funded financial institutions for market access and expansion of business areas were approved recently, including the establishment of the first foreign-owned pension insurance company by Heng An Standard Pension Insurance Co., Ltd., the re-purchase of shares of Huatai Insurance Group by the US

ACE Ltd., and Hong Kong AIA Insurance Co., Ltd. participating in the trial of regional insurance operations across Beijing-Tianjin-Hebei regions. (CNR)

- **Geely Holding Group and Daimler Group form an equity joint venture to jointly operate and develop "smart" brand worldwide**

On March 28, Zhejiang Geely Holding Group and Daimler AG announced that they would establish an equity joint venture to jointly operate and promote the transformation of "smart" brand on a global scale. "Smart" will become a pure electric smart car brand. The headquarter of equity joint venture will be in China. Each party holds 50% shares. (Wall Street News)

## OVERSEAS DIRECT INVESTMENT

- **Germany approved Fuyao's acquirement of SAM**

On March 1, Süddeutsche Zeitung reported, the German Federal Cartel Office approved the acquisition of the German SAM company by China Fuyao Group in January this year. SAM mainly produced and sold aluminum bright strips, and filed for bankruptcy in August last year. (China Daily)

- **YY Inc acquired BIGO for US\$1.45 billion**

On March 5, YY Inc announced completing the wholly-owned acquisition of the overseas video social platform BIGO with \$1.45 billion. BIGO is a company established in Singapore in 2014 and currently has more than 69 million active users worldwide. (China Daily)

- **Yili's subsidiary acquired New Zealand's second largest dairy cooperative with more than 1.1 billion yuan**

On March 18, Yili announced that its wholly-owned subsidiary, Jingang Trading Holding Co. Ltd., acquired 100% equity shares of Westland Cooperative Dairy Company Limited, the second largest dairy cooperative in New Zealand, with a total consideration of no more than 246 million New Zealand dollars (about 1.134 billion yuan) to further radiate global markets. (The Beijing News)

- **Yinlong will acquire Ikarbus**

On March 21, the State Secretary of the Serbian Ministry of Economy said that Chinese Yinlong will complete the acquisition of Ikarbus and become its new shareholder. The State Secretary said that Yinlong already completed the relevant acquisition procedures through banks. Yinlong New Energy Automobile Co., Ltd. is one of the largest automobile manufacturing companies in the world. (Ministry of Commerce)

- **CIC established another Sino-French industrial fund with a scale of 1 billion to 1.5 billion euros**

On March 25, China's sovereign wealth fund China Investment Corporation (CIC) teamed up with BNP Paribas, the largest French bank, and Eurazeo, a private equity group, to create a fund with a scale of 1 billion to 1.5 billion euros to support European companies wishing to expand into China. (Financial Times Chinese Network)

- **Linglong Tire settled in Serbia**

On March 30, the new plant established by China's second-largest tire manufacturer Shandong Linglong Tire in Zrenjanin, Serbia, officially broke ground. Linglong Tire became the first Chinese tire company to set up a factory in Europe. With an investment of nearly US\$1 billion, the project is currently the largest Chinese single investment in Serbia and the largest foreign direct investment project in Serbia. (Guangming Net)

**Disclaimer: All of the above information is from domestic and foreign media reports and publications. We have not verified the specific content of the information, and are not responsible for its authenticity, accuracy and completeness. This publication does not constitute any form of legal opinion or advice. If you need legal consultation on a particular matter, please contact the following lawyers:**



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