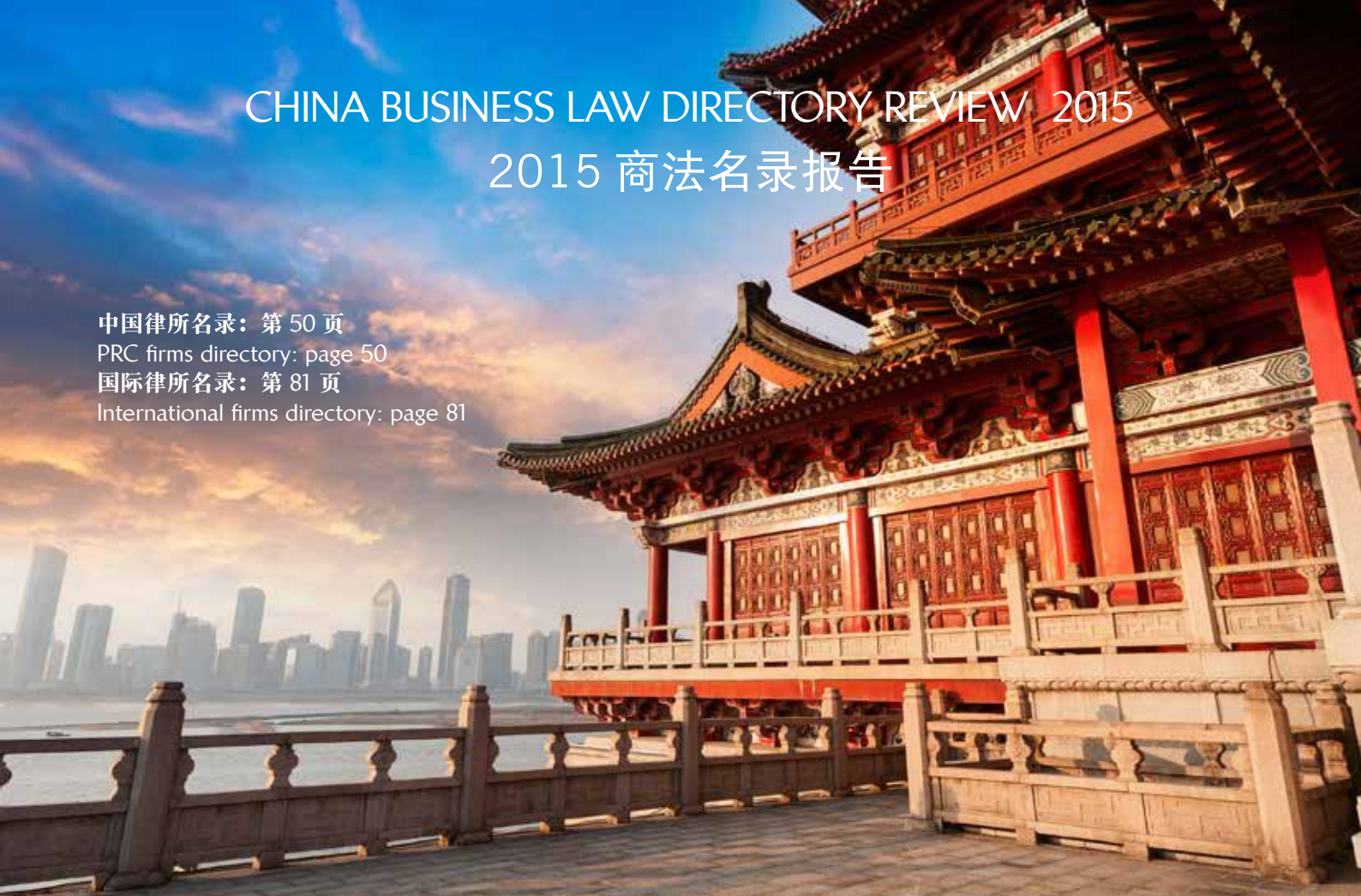


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继往开来 Changing horizons

在中国经济步入新常态之际，众多法律专家对近来影响市场的主要法规变化以及未来一年的前景发表了自己的看法。作者：黎爱莲

Experts give insight into the regulatory developments influencing the market and what the coming year promises as China adapts to the new normal, writes Alainna Wrigley

在 今年的《商法》名录报告中，我们咨询了众多来自领先律师事务所的专家，了解在过去一年他们眼中影响其客户及其法律服务的主要法规和市场动态。这些专家在报告中分享了他们的经验，并根据专业知识展望即将发生的重要变化。

中国放宽了对境内外投资以及审批流程的限制，不少律所对此表示支持。其中很多律所也期待中国会进一步解除针对国内外公司的监管制度。但是这也意味着目前制度下的可变利益实体（VIE）结构将会走向尾声，因此也有一些专家对此保持审慎态度。

同时，中国在合规以及竞争方面的立法与执法力度的加强，也进一步体现了中央政府对于反腐的承诺。监管者发起了为期两年的反腐运动去打击建设行业的裙带关系。这个行业的腐败导致了豆腐渣

For this year's directory report, we consulted experts from leading firms to gain their insights into the major regulatory and market developments over the past year that have impacted their clients and the services they provide them. These experts share their experiences herein, and give their informed predictions of important changes on the horizon.

Firms are welcoming with open arms relaxation of restrictions on both inbound and outbound investment and less approval red tape. Many also look forward to the further dismantling of the bifurcated regulatory system for foreign and domestic companies. However others remain cautious as this may also herald the end of variable interest entities taking advantage of this system.

At the same time, increased legislation and enforcement in compliance and competition has reinforced the central authori-

工程的出现,造成了公众资金的滥用以及人身伤亡。律所也了解到,知识产权方面的反垄断工作也变得越来越突出。

IP 法庭引领保护新时代

2008年发布的《国家知识产权战略纲要》提出,要发挥司法对知识产权保护的主导作用。去年,中国的知识产权制度取得了重要发展,三个专门的知识产权法院分别在北京、上海和广州设立,并都于2014年11月起开始运作,受理涉及商标认定和技术秘密的民事和行政一审案件,还会受理针对商标评审委员会等机构的行政决定提起诉讼的一审案件,以及涉及版权等民事及行政二审案件。

“知识产权法院的设立只是一个标志,体现了国家加大对知识产权保护力度、提高知识产权案件的审判质量和统一审判标准,进而为国家创新战略保驾护航、提供动力的愿景,”中国国际贸易促进委员会专利商标事务所业务发展处副处长与专利律师郭小军说。

中国数量庞大的知识产权案件正在压垮民事和行政案件法庭,因此没有人会否认知识产权法院系统的设立是业界所欢迎的。但很多人也强调了需要将期望控制在合理范围内。知识产权法院的法官和司法干部是否拥有针对知识产权或其中部分领域的丰富经验,这仍然是一个未知数。

铸成律师事务所创始合伙人苍雨春也曾听到有客户对这些法院表示担忧。“我们比较关心对知识产权法院的行政及司法安排。目前,我们不少客户多次提到他们在知识产权法院提请诉讼时面对极大的挑战。”苍雨春说,客户特别提到法院要求提交某些在知识产权诉讼中并不常见的文件。

另外,铸成律师事务所合伙人兼专利部经理孟锐指出,不少律师期待《专利法》第四次全面修订。今年四月,国家知识产权局发布了专利法草案的征求意见稿,尽管这只是知识产权局自己发布而不是国务院发布的。他补充说,国家知识产权局也修订了其他法规去配合《专利法》的修订,例如在一月修订的《专利行政执法办法》。

至于将来还会有哪些进展,中国专利代理(香港)有限公司总经理曾祥麦预计,在不远的将来,不同法域之间很有可能将会进行更深入的合作以及工作分享。“中、美、欧、日、韩五大知识产权局近日达成了合作共识,将不断加强五局之间的工作共享、合作提高专利审批的质量和权利的稳定性,并降低公众获取专利信息的门槛。”曾祥麦认为:“这些都是惠及产业界用户和社会公众的措施,但也给知识产权代理机构在互联网时代的服务和管理模式带来了新的挑战。”

知识产权反垄断新焦点

在过去,国家知识产权战略的一项额外目标是在知识产权方面设立关于不正当竞争的法规;七年之后,这个目标正逐步完成。四月,国家工商行政管理局发布了《关于禁止滥用知识产权排除、限制竞争行为的规定》,该规定于八月生效。国家发展和改革委员会也将于近期发布针对知识产权许可的反垄断指导意见。

“考虑到高通反垄断案、华为诉IDC案等最近的一些案件,中国的反垄断执法机关似乎在近期将更多的注意力投向知识产权相关的问题,”安杰律师事务所管理合伙人詹昊说。二月,在经历高调

ties' commitment to the anticorruption campaign. Regulators have launched a two-year campaign to fight nepotism in the construction industry, where corruption has resulted in misuse of public funds and the loss of life due to shoddy materials. Firms have also seen greater emphasis on antitrust in intellectual property.

IP courts usher new era for protection

The Outline of the National Intellectual Property Strategy, issued in 2008, called for the judiciary to play a leading role in protecting IP rights. In the past year, China's intellectual property regime received a major boost from three specialized intellectual property courts. The courts, established in Beijing, Shanghai and Guangzhou and operational from November 2014, will hear first instance civil and administrative cases regarding, among others, trademark recognition and technological secrets, first instance judicial appeals against administrative decisions from agencies such as the trademark review board and second instance (appeal) civil and administrative cases on copyright, among others.

“Setting up IP courts is a symbolic embodiment of China strengthening protection of IP, improving the quality of IP rights trials, and unifying IP trial standards”, says Guo Xiaojun, patent attorney and deputy business development director of CCPIT Patent & Trademark Law Office in Beijing.

“They will act as bodyguards for the innovation-driven development strategy and provide the aspirations for the strategy with a motivating power”, he says.

None would deny that the IP court system is a welcome development due to the immense number of IP cases weighing down the caseloads of civil and administrative courts. However, many lawyers stress the need to balance expectations. Whether the judges and judicial officers of the IP courts have a strong legal background in IP, or specific areas of IP, remains unclear.

Spring Chang, a founder and partner of Chang Tsi & Partners, has heard disquiet from clients regarding the courts. “We are concerned about the bureaucratic and judicial arrangements for IP courts”, Chang says. “Currently many of our clients have repeatedly expressed the extreme challenges presented to them while filing litigation before the IP courts.” She notes that clients have raised in particular that certain documents required by the court are atypical for IP litigation.

Further, Martin Meng, a partner of Chang Tsi & Partners and manager of their patent department points out that lawyers should look forward to the fourth revision of the Patent Law. In April this year, the State Intellectual Property Office (SIPO) circulated the draft revision for public comment, albeit by the SIPO itself rather than the State Council. He adds that the SIPO has also been revising other legislation to coordinate the revision of the Patent Law, e.g. a draft revision of the Measures on Patent Administrative Enforcement in January.

As for what is to come, Zeng Xiangling, general manager of China Patent Agency in Hong Kong, sees the potential for greater cooperation and work-sharing between jurisdictions in the near future. “Recently intellectual property institutions in five countries – the US, China, EU, Japan and South Korea – came to an agreement, affirming that they would increase their cooperation and work sharing to improve the quality of patent examination and stability of rights and lower the threshold for public access to patent information.”

在技术密集型行业…的公司，
应该在其专利策略方面保持谨慎

Companies in technology-intensive industries ... should be cautious in their patent strategies



詹昊
Zhan Hao
安杰律师事务所
管理合伙人
北京
Managing Partner
AnJie Law Firm
Beijing

的反垄断专利许可审查之后，高通被罚款 9.75 亿美元（60.5 亿元人民币）。华为诉 IDC 案涉及标准必要专利的许可，最终 IDC 赔偿华为损失约 2000 万元人民币。

西盟斯律师事务所驻上海合伙人李蕾思 (K. Lesli Ligorner) 注意到，针对含有知识产权的产品销售，反垄断执法有了显著的提升。“相关部门评估了如何对一些国际大型公司及国内公司进行处罚。这要求商业运营者去审视他们的模板协议以及商业活动，以确保对反垄断法的合规，”她提醒道。

除了合规问题要解决外，观韬律师事务所驻北京合伙人孙韶松提到，最近的反垄断调查以及处罚让不少公司变得更谨慎，尽可能少采用近乎垄断的策略。

“在技术密集型行业，例如信息及电信、医药、医疗设备以及汽车等行业的公司，应该在其专利策略方面保持谨慎并密切留意相关部门的执法动态，”詹昊说。

金融市场的更多选择

2014 年 3 月，中国证券监督管理委员会发布了《优先股试点管理办法》，允许公司通过优先股这种股票和债券的混合体提高对资本和融资的运用。中伦文德律师事务所副主任兼管理合伙人甄庆贵说：“国家近期支持优先股项目的发展，在此基础上，[我所] 团队开展了某著名国企在境内发行优先股项目，此次发行采取向合格投资者非公开发行的方式，发行优先股总数不超过 1.35 亿股，募集资金总额不超过人民币 135 亿元。”

预计即将到来的首次公开发行的注册制改革同样多次被谈及。北京天元律师事务所合伙人杨科提到，人大常委会最近对《证券法》的修订进行了审议，预计将在今年通过。此次修订将带来 IPO 制度的彻底变革，从评估审核制度转变为仅要求上市公司进行注册与信息披露。估计此次修订最早会在今年十月通过。

希望完全回避资本市场的人或许正在寻找其他的融资方法，但 these 方法未必已经得到了法律支持。“互联网 + 金融是推动中国金融业改革的重要动力，”卓纬律师事务所管理合伙人朱宁说。朱宁特别提到 P2P 个人借贷。于 2013 年横空出世的 P2P 借贷将资本

“These measures are beneficial to the industry as well as the general public, but they also bring new challenges to IP agency services and management in the internet era”, Zeng says.

New focus on antitrust in IP

An additional goal of the national IP strategy was provisions on intellectual property relating to unfair competition; after seven years, that goal is being achieved. In April, the State Administration for Industry and Commerce issued the Regulations on the Prohibition of Intellectual Property Rights Abuse to Eliminate or Restrict Competition, effective since August. The National Development and Reform Commission is also expected to release antitrust guidelines in the licencing of IP in the near future.

“Considering recent cases such as the Qualcomm case and Huawei vs IDC case, China’s antitrust enforcement agencies seem to intend to pay more attention to IP-related issues in the near future”, says Zhan Hao, managing partner of AnJie Law Firm. In February, Qualcomm was fined US\$975 million after a high-profile antitrust review of its patent licencing. The Huawei vs IDC dispute concerned the licencing of standards-essential patents and resulted in damages of RMB 20 million to Huawei.

Shanghai-based Simmons & Simmons partner Lesli Ligorner has also seen a particular increase in antimonopoly enforcement with IP interface and in a distribution context. “Penalties have been assessed against both international giants and domestic players”, she cautions. “This requires business operators to review their template agreements and business activities to ensure compliance with the Antimonopoly Law.”

Sun Shaosong, a partner of Guantao Law Firm in Beijing, notes that, while there remain issues of compliance to be addressed, recent antimonopoly investigations and penalties have made companies more cautious, and less likely to adopt monopoly-esque strategies.

“Companies in technology-intensive industries such as information and telecommunications, pharmaceuticals, medical equipment and automobiles should be cautious in their patent strategies and keep a watchful eye on the enforcement acts of the agencies”, adds Zhan.

More choices in financial markets

In March 2014, the China Securities Regulatory Commission issued the Measures for the Administration of the Preferred Stock Pilot Programme, allowing companies to have increased access to capital and financing via preferred shares, a hybrid of stock and bonds.

Zhen Qinggui, deputy director and managing partner of Zhonglun W&D Law Firm, says, “Based on the support the state has shown for the preferred stock programme, [we] led a team on a domestic preferred stock transaction involving a major state-owned enterprise via a non-public offering to qualified investors that raised just under RMB 13.5 billion (US\$2.18 billion) after an issuance of under 135 million shares.”

Much talked about this year has also been the anticipated overhaul of the registration regime for initial public offerings. Yang Ke, a partner of Tian Yuan Law Firm in Beijing, notes that the revision to the Securities Law was recently deliberated by the Standing Committee and is expected to be passed this year. The amendments are expected to revamp the IPO system, moving from requiring assessment and approval to simply requiring reg-

不少中国互联网和科技公司在上市地点的选择上做出了急剧改变

[We see] a rapid change of direction in listing venues for most Chinese internet and technology companies



陈磊明

Chen Leiming

盛信律师事务所
中国业务负责人
香港

Head of China Practice
Simpson Thacher & Bartlett
Hong Kong

需求者与潜在借贷人直接对接。“新行业的诞生、政策的不确定性，使得法律服务行业面临更大的挑战，我们将会遇到之前从未遇到的问题情况。”

互联互通

君泽君律师事务所驻北京合伙人李云波说，对于目前很多律师事务所来说，最为活跃的领域之一是资本市场，特别是风险投资和上市。

吴理文律师事务所上海办公室高级合伙人张燕介绍说：“过去12个月，中国资本市场的复苏对本所的资本市场业务，以及与该业务相关的私募和并购业务产生了重大影响。”“未来12个月，预计中国资本市场将持续复苏和发展。与之相应，预计本所客户对IPO、私募以及并购法律服务的需求将增加，”她说。

去年，中国大陆资本市场经历了一系列的变化。2014年11月，中国大陆和香港的资本市场通过沪港通完成了对接，目前深港通也在酝酿中。沪港通允许一方市场的投资者通过其当地的股票经纪以及结算交易所，买卖对方交易所上市的股票。4月9日，香港证交所交易额创下了2915亿港元的记录，是平日交易额的三倍多，业界认为这部分归功于沪港通。

盛信律师事务所合伙人以及中国业务负责人陈磊明说，另一里程碑式的发展是香港与中国大陆的基金互认安排。基金互认让各自市场的资产管理人可以将基金卖给另一个市场的散户。“这两者都有利于中国大陆和香港的投资者，也被视为中国将其资本市场与世界其他市场对接的重要一步，”他说。

人民币国际化

中国国际化进程的一个重要部分是人民币的国际化。三月，中国人民银行货币政策司官员郭建伟在一个关于人民币国际化的论坛上提到，中央银行以及其他部门已经向国务院报送了旨在拓宽中国企业跨境投融资渠道、简化海外投融资审批流程的政策议案。相关政策预计将在近期推出。

istration combined with information disclosure. Estimates put October as the earliest time the amendment may be adopted.

At the same time, those who may wish to avoid capital markets entirely are finding new methods of raising funds – methods not yet supported by legislation.

“The financial sector in China is becoming more digitized, a trend that is pushing significant changes in China’s commercial and finance industries”, says Ning Zhu, managing partner of Chance Bridge Partners.

Ning indicates that peer-to-peer (P2P) lending in particular, which links those in need of capital directly to potential lenders, has taken off since 2013. “Because it is a new industry, the policies are uncertain and this has led to challenges, problems and opportunities.”

New connections

One of the most active areas for many firms at present, says Li Yunbo, a Beijing-based partner of JunHeJun Law Firm, is the bubbling capital markets – particularly venture capital and listings.

“The capital market recovery over the past 12 months had a significant impact on our firm’s work in capital markets, private equity and M&A”, says Yan Zhang, a senior partner in HaoLiWen Partners’ Shanghai office. “We expect that the capital markets will continue to recover and develop in the next year and that our client demand for IPO, private equity and M&A services will increase accordingly.”

In the past year, mainland capital markets have undergone a number of changes. In November 2014, the mainland and Hong Kong financial markets were connected with the Shanghai-Hong Kong Stock Connect programme, and a Shenzhen-Hong Kong link is on the horizon. The stock connect allows investors to trade on the other market using their local brokers and clearing houses, and was credited in part for the record trading on the Hong Kong exchange HK\$291.5 billion (US\$37.61 billion) on 9 April, more than three times the daily average.

Another landmark development, notes Chen Leiming, partner and head of Simpson Thacher’s China practice, is the Hong Kong-China mutual fund recognition programme, which allows asset managers in each market to sell funds to retail investors on the other side. “Both events will benefit the investors in China and Hong Kong and meanwhile are seen as important steps for China to integrate its financial markets with the rest of the world”, he says.

RMB going global

One major part of China’s further global push has been RMB internationalization. In March, Guo Jianwei, an official from the People’s Bank of China monetary policy department, revealed during a forum on RMB internationalization that central bank and other agencies had submitted policy proposals to the State Council to broaden cross-border investment financing channels and simplify approval procedures for overseas investment and financing by state-owned enterprises. The policies are expected to be released within the near future.

A recent report from King & Wood Mallesons (KWM) estimated that the RMB may be fully convertible by 2020. Wang Ling, KWM’s managing partner of China, points to the pilot free trade zone programmes such as the Shanghai International Gold Exchange – all gold traded on the exchange’s international border

根据金杜律师事务所最近一份报告的估计,到2020年,人民币将可能完全实现自由兑换。金杜律师事务所中国区管理合伙人王玲提到上海自贸区的一些项目,例如上海黄金交易所国际板的启动,让所有黄金交易都可以用人民币标价进行。“这项举措通过吸引国际投资者以及境外人民币基金参与境内金融市场的交易活动,迈出了人民币国际化的重要一步,”她说。

政府及工业融资新途径

2014年修订的《预算法》在今年一月生效,政府债务的发行受到严格监管;地方政府要在立法机构和中央部门的管控下发行债券。随着此次修订,国务院一连发布了四份文件,以清除现存的优惠政策并鼓励在特定领域(包括公众机构改革以及医疗)的私有资本投资,其中包括《关于加强地方政府性债务管理的意见》以及《关于创新重点领域投融资机制鼓励社会投资的指导意见》等。

“对地方政府及其融资平台企业而言,原先主要依靠融资平台企业沉淀政府债务、不透明预算及自行制定税收等优惠政策招商的做法[现在]受严格管控,”上海邦信阳中建中汇律师事务所合伙人陆国飞说,“上述规定在堵死地方政府旧模式的同时,又为其开启了以PPP模式为代表的与社会资本合作模式,包括各种投融资创新。”

今年五月,财政部、国家发改委以及中国人民银行联合发布了《关于在公共服务领域推广政府和社会资本合作模式的指导意见》,以支持PPP项目(Public-Private Partnership)的发展。“目前中国中央和地方均在力推政府和社会资本合作的项目,”中伦律师事务所驻北京合伙人王霁虹说。“各大部委频繁发文作出相关指示。PPP成为了各个地方的讨论热点,社会上也兴起了多种学习PPP的热潮。”

作为财政部PPP中心的专家,王霁虹参与了财政部PPP项目合同指南的讨论和编写,她认为PPP项目的发展将成为近期的一个重点,“相应地,市场对于能够提供PPP项目法律服务人才的需求缺口也在扩大。”

“走出去”趋势

2014年,中国境外投资首次超过境内投资。根据商务部公布的数据,中国的境外直接投资攀升至1030亿美元,与前年相比增长了14%,而境内直接投资达到1200亿美元,只上升了1.7%。“目前,绝大多数的境外投资项目都只需要办理备案手续,境外投资的自由化和便利化程度大大提高,”中伦律师事务所管理合伙人吴鹏说。

温斯顿律师事务所合伙人兼亚洲业务主席陆志明表示:“境外投资法规的放宽将意味着低于10亿美元项目的投资者只需要提交申请而不需要像过去那样去审批。”他认为:“这让中国的境外投资得到增长。”

去年,很多促进中国进行海外投资的新法规得到通过并开始生效。《境外投资管理办法》在2014年10月生效,减少了海外投资项目所需的行政审批,并将行政权力下放到更低的政府层级。2014年5月生效的《境外投资项目核准和备案管理办法》在当年12月进行修订,规定只有在敏感法域和行业或者数额超过10亿美元的投资项目才需要国家发改委的批准。

“从我们的角度来看,最为重要的一项趋势是中国企业正在增加

will be denominated in RMB. “This launch marks a significant step forward in the internationalization of RMB by attracting international investors and offshore RMB funds to participate in the trading activities on the onshore financial market”, she says.

New financing methods for government and industry

In the 2014 amendment of the Budget Law, effective January this year, the issuance of government debt came under strict control; local governments were permitted to sell bonds under the control of the legislature and central authorities. Following the revision, the State Council released a series of four documents, including the Opinions on the Strengthening the Administration of Local Government Debt and the Guiding Opinions on Innovating the Investment and Financing Mechanism for the Key Fields and Encouraging Social Investment. The documents set out measures to clean up existing preferential policies and encourage private capital investment in areas such as public institution reform and healthcare.

In May this year, the Ministry of Finance, National Development and Reform Commission and the People's Bank of China issued their Guiding Opinions on Promoting a Model for Cooperation between Government and Private Capital in the Public Services Field to support public-private partnership (PPP) projects.

“Investment incentives on which local governments and their financing platform enterprises relied in the past, including precipitating on sovereign debt, opaque budgets and local taxes, have come under strict control,” says Shanghai-based Boss & Young partner Lu Guofei. “These regulations have cut off local governments from their old financing vehicles and launched the PPP as one method of private cooperation, including various investment and financing innovations.”

“Currently the central and local governments are promoting cooperative capital projects between the government and private sector, i.e. PPP,” says Wang Jihong, a partner of Zhong Lun Law Firm in Beijing. “All the ministries, departments, and commissions have been issuing directives on this. PPP projects are the hot topic everywhere, and there is an upsurge throughout various parts of the private sector of people considering PPP.”

[外国投资法]草案将取消外商在中国投资所适用的全面审批制度

The draft [foreign investment] law will abolish the comprehensive approval system ... applicable to foreign investment in China



张永财
Franki Cheung
的近律师事务所
中国业务负责人
香港
Head of China Offices
Deacons
Hong Kong

PPP成为了各个地方的讨论 热点

There is an upsurge throughout various parts of the private sector of people considering PPP



王霁虹
Wang Jihong
中伦律师事务所
合伙人
北京
Partner
Zhong Lun Law Firm
Beijing

对欧洲投资的兴趣，不论是外商直接投资还是通过并购，”隆路律师事务所驻香港合伙人 Jan Willem Möller 说。“中国经济的持续放缓在过去一年并没有对这股趋势产生负面影响。”

柯杰律师事务所管理合伙人何杰表示，今年境外投资交易特别活跃，尤其是在欧洲大陆以及英国等热门地区。确实，贝克·麦坚时律师事务所和荣鼎咨询公司的研究显示，中国对欧洲发达国家的投资在 2014 年打破纪录，达到 180 亿美元。并购市场资讯 (Mergermarket) 的报告显示，今年第一季度已经有 11 项对欧洲的投资交易，总额达到 96 亿美元；这个积极的趋势看来仍将持续。

中国对其他区域的投资预计也会继续发展。金杜的王玲指出：“一带一路计划对于中国近期的境内外投资有了显著的促进作用。我们预计这个计划将继续为中国企业以及相关区域、国家带来机遇。”

一带一路计划在 2013 年底公布，是新丝绸之路经济带及海上丝绸之路国家的“升级版”发展框架。新丝绸之路从中国穿越中亚、西亚，海上丝绸之路则沿着南中国海、南太平洋以及印度洋一路延伸。中国中西部的十八个地区也将参与其中。这个计划由直接向国务院报告的特别领导小组推动，旨在连接和提升众多沿线国家（大部分是新兴市场）的联系。一带一路计划涉及的国家中有些是亚洲基础设施建设发展银行的成员国家。

Grata Law Firm 北京代表处中国业务负责人 Gulnur Nurkeyeva 提到，自从一带一路计划提出以及一些国家为响应一带一路而提出了配套计划之后（例如哈萨克斯坦的“光明大道”项目），中国对中亚的投资就出现了一个强有力的上升趋势。“以前，投资者会通过欧洲国家对哈萨克斯坦进行投标和投资，”她说，例如此前中国石化通过荷兰公司购买石油。“但现在，他们正直接投资到哈萨克斯坦和其他国家。”

位于上海的锦天城律师事务所高级合伙人兼管委会主任吴明德说：“[一带一路规划] 不仅增加了国际法律服务业的发展机遇，更主要的是能带动中西部地区法律服务业的新发展。”吴明德指出，中国 26 万人的律师群体中有 34% 在中西部地区工作，但是业务创收只占内地律所业务创收的 16%。“显然，未来几年中西部地区律师业发展有很大潜力，”他说。

Wang, who is listed as an expert in the Ministry of Finance's PPP Centre, and has participated in preparing the ministry's guidelines for PPP projects, feels that PPP projects will be a key focus of the government in the near future. “Accordingly, the demand for skilled lawyers who can provide PPP services is also increasing.”

Going global trend not flagging

For the first time, outbound investment nearly eclipsed inbound investment in 2014. According to figures released by the Ministry of Commerce, China's outbound direct investment leaped to US\$103 billion, an increase of 14% over the previous year, while inbound direct investment hit US\$120 billion, an increase of only 1.7%.

“The extent to which outbound investment is being facilitated and liberalized has increased dramatically”, says Zhong Lun Law Firm managing partner Wu Peng.

“The relaxation of rules governing outbound investment means investment under US\$1 billion will only require filing rather than approvals as in the past”, says Simon Luk, partner and Asian practice chairman of Winston & Strawn. “This has led to increased outbound investment from China.”

In the past year, numerous new legislation facilitating Chinese investment overseas was adopted or became effective. The Measures for the Administration of Foreign Investment, which took effect in October 2014, reduced the amount of administrative examination and approval required for overseas investment projects; it also moved administration and delegation power to lower levels of government.

The Measures for the Administration of Verification, Approval and Filing of Outbound Investment Projects, which took effect in May 2014 and then were further revised in December 2014, set out that NDRC approval is required only for projects in sensitive jurisdictions or industries, or with investment at or exceeding US\$1 billion.

“One of the most significant developments from our firm's perspective is the increased interest of Chinese parties to pursue investments in Europe, both by way of direct foreign investments and through mergers and acquisitions”, says Jan Willem Möller, a partner of Loyens & Loeff based in Hong Kong. “The continuing slowdown of the Chinese economy does not appear to have had any adverse impact on this trend during the last 12 months.”

Kejie Law Office managing partner He Jie notes that this year has been particularly active for outbound investments, especially into more developed regions such as continental Europe and the UK.

Indeed, research from Baker & McKenzie and Rhodium Group reveals that Chinese investment into the developed economies of Europe hit record levels in 2014 at more than US\$18 billion. This positive trend is expected to continue, with Mergermarket reporting that the first quarter of the year has already seen 11 announced investment deals into Europe totalling US\$9.6 billion.

Investments are expected to continue in other regions as well. KWM's Wang Ling points out, “the One Belt, One Road initiative has contributed significantly to China's recent outbound and inbound investments. We expect it to continue to bring opportunities to Chinese enterprises as well as related regions and countries.”

[一带一路规划]能带动中西部地区法律服务业的新发展

The [One Belt, One Road] initiative can spur development in the central and western region of China



吴明德
Wu Mingde
锦天城律师事务所主任
上海
Managing Director
AllBright Law Offices
Shanghai

并购的热门活动

根据汤森路透的数据,中国境内并购在今年前两个季度已经达到了3053亿美元,是中国有记录以来成绩最好的半年。而根据《中国日报》报道,同一时期的境外并购已经达到了447亿美元,是2008年以来最高的。

康德明律师事务所香港合伙人兼联席主席林大维(David Lamb)说:“在2015年第一季度,整个亚洲的并购活动前所未有地活跃。整个领域的交易在中国大陆和更广阔的亚太地区都有显著的提升。”林大维引用彭博社最近的数据说,在第一季度亚太地区的交易总量首次超过了欧洲、中东和非洲。另外,中国的参与带动了新兴市场的并购活动,参与度之高远超另外两个金砖国家巴西和俄罗斯。

“亚洲并购市场的发展很大程度上是由中国民营企业以及它们稳健的资产负债表驱动的,”史密夫·斐尔律师事务所合伙人兼北京代表处负责人邹兆麟说,“在这样的背景下,随着市场投资者将其投资组合多元化并延伸至其他行业,我们预计私募基金将会带动这些地区的活动。我们也期待,中国与澳大利亚、韩国签署的自由贸易协议将会在今年催生更多的跨境交易。”

中国在六月宣布与韩国、澳大利亚签订了自由贸易协议。根据《The Diplomat》报道,按照协议所影响的交易额来计算,中韩自由贸易协议对于中国来说是最大的自贸协议,也被看作是最终实现中日韩三国自贸协议的基础。但在澳大利亚,中澳自由贸易协议却遭到工会和行业组织的批评,特别是关于劳动市场问题以及协议的一项条款——该条款规定,如果澳大利亚的某些政策对中国利益造成负面影响,中国可以控告澳大利亚政府。

境内投资限制放宽

“在境内外投资方面逐步放开的监管法规意义最为重大,”乌利亚律师事务所北京代表处合伙人 Francisco Martínez Boluda 说。“在境内方面,我们很高兴能够看到外商投资产业指导目录的改变,这让外国投资者可以在更广阔的领域进行更自由的投资。”

Announced in late 2013, the One Belt, One Road initiative is a developmental framework along the Silk Road “economic belt”, which stretches from China through central and west Asia to Europe, and the “maritime Silk Road”, which runs through countries along the South China Sea, South Pacific and Indian Ocean; also earmarked for involvement are 18 areas in central and western China.

Bolstered by a specialized leading group reporting directly to the State Council announced in February, the initiative aims to connect and increase cooperation between the countries, the majority of which are emerging economies. The target jurisdictions also overlap in part with membership in the Asian Infrastructure Investment Bank.

Gulnur Nurkeyeva, the head of Grata Law Firm’s China desk in Beijing, reports an intense uptake in transactions in Central Asian states since the start of the One Belt, One Road Initiative and complementing initiatives such as Kazakhstan’s Bright Road initiative.

“Before investors would bid and invest in Kazakhstan through European countries”, Nurkeyeva says, such as Sinopec’s prior purchase of oil via a Dutch company. “However now they are investing directly into Kazakhstan and other countries.”

Wu Mingde, senior partner and managing director of AllBright Law Offices based in Shanghai, says, “The initiative does not just provide greater opportunities for developing international legal services; more importantly, it can spur development in the central and western region of China.” Wu points out that 34% of China’s more than 260,000 professional lawyers work in these regions, with earnings of only 16% the national total. “There is great development potential for legal services there”, he says.

Hot activity in M&A

According to data from Thomson Reuters, domestic M&A reached US\$305.3 billion in the first two quarters of this year, the best first half year recorded for Chinese M&A. Per *China Daily*, outbound M&A reached US\$44.7 billion in the same period, the highest since 2008.

[上海黄金交易所国际板的启动]迈出了人民币国际化的重要一步

This launch [of the Shanghai International Gold Exchange] marks a significant step forward in the internationalization of RMB



王玲
Wang Ling
金杜律师事务所
管理合伙人
北京
Managing Partner
King & Wood Mallesons
Beijing

亚洲并购市场的发展很大程度上是由中国民营企业…驱动的

The growth in Asia's M&A market is largely being driven by the rise of private Chinese companies



邹兆麟

Tom Chau

史密夫·斐尔律师事务所
北京代表处负责人
Head of Beijing Office
Herbert Smith Freehills



四月，中国 2015 年修订的《外商投资产业指导目录》正式生效，取代了 2011 年的较早期版本。新近的修订见证了 20 年来限制条款的最大规模删减，其中有 41 个行业的限制被取消，两个行业的禁止性规定被取消。（如欲了解关于该目录的更多信息，请参阅《商法》月刊 2015 年 5 月号《新的外国投资目录下投资进一步放开》以及 6 月号《新外商投资目录放开更多领域》。）

“政府将限制类行业的数量由 79 个减少到 38 个，要求中外合资经营的行业由 43 减少到 15 个，要求中方控股的行业由 44 减少到 35 个，”德同律师事务所亚洲区管理合伙人 Mitch Dudek 介绍说。他特别指出制造、医药、基础设施、能源、娱乐等行业的外商投资变得更自由了。

来自史密夫·斐尔的邹兆麟预计，由于这个目录的修订，他们有意在中国进行外商直接投资的客户在种类及数量上都会得到一定程度的提升。邹律师提到：“总的来说，这些改变将为人们目前所了解的中国投资环境带来积极的影响，并吸引更多的潜在参与者进入曾经的限制领域以及新的鼓励领域中。”

自贸区

投资目录的修订体现了在中国部分地区——尤其是上海自贸区——此前试行的投资促进政策。中国（上海）自由贸易试验区在 2013 年启动，在投资、对外贸易、专业服务以及金融领域进行改革创新。四月，自贸区已经扩展到上海之外的多个地方，包括天津、福建以及广东，并进一步简化了投资程序。

自贸区是培育并测试经济改革的试验田，区内的创新举措一般都有望在不久后复制到整个中国。改革措施中最多被提及的是投资的负面清单管理制度，这一制度被复制到了《外国投资法》草案。不像《指导目录》那样将行业分为禁止类、限制类及鼓励类（没有被列出的行业则属于允许类），负面清单只列举了关键或敏感行业的部分项目，包括自然资源、测绘、干细胞研究、广播以及印刷媒体、教育、专业服务、制造业、金融、基建以及互联网和电信。但是，一

David Lamb, a Hong Kong-based partner and co-chairman of Conyers Dill & Pearman, notes, “M&A activity was unprecedented throughout Asia in Q1 2015. Deal activity in this sector has increased significantly across China and the wider Asia-Pacific region.”

Pointing to recent data from Bloomberg, Lamb says that the Asia-Pacific deal volume in the first quarter is greater than that of Europe, the Middle East and Africa for the first time. Additionally, Chinese involvement drove M&A activity in emerging markets, far outpacing its BRICS compatriots Brazil and Russia.

“The growth in Asia's M&A market is largely being driven by the rise of private Chinese companies and their strong balance sheets”, says Tom Chau, partner and head of Herbert Smith Freehills' Beijing office. “We expect private equity to drive activity along these corridors with market participants diversifying their portfolios and expanding into other industries. We also anticipate that China's free trade agreements (FTA) with South Korea and Australia will generate more cross-border activity during the course of this year.”

China announced FTA with both South Korea and Australia in June. According to *The Diplomat*, the Sino-South Korean FTA is the largest for China in terms of the volume of trade affected by the deal and viewed as a stepping stone to an eventual Sino-South Korea-Japan trilateral FTA. In Australia, however, the Sino-Australian FTA has come under attack by unions and industry groups alike, particularly regarding labour and a clause allowing China to sue the Australian government should certain policies negatively impact China's interests.

Restrictions loosened on inbound investment

“The gradually relaxed regulatory rules on inbound and outbound investments are of the most significance,” says Francisco Martínez Boluda, a partner of Uría Menéndez in Beijing. “On the inbound side, we are glad to see reforms on the foreign investment industries catalogue, which allows foreign investors to invest in more sectors with less restrictions.”

In April, the 2015 revision of the Catalogue for the Guidance of Foreign Investment Industries took effect, superseding an earlier version of the catalogue issued in 2011. The latest revision saw the greatest number of reductions in the catalogue's 20-year history, with restrictions being removed on 41 industries and prohibitions removed from two. (For further information on the catalogue, see “Further liberalizations under revised foreign investment catalogue” and “More industries open to foreign investors under new catalogue” *China Business Law Journal*, May and June 2015.)

“The government reduced the number of restricted sectors from 79 to 38, the number of sectors of Sino-foreign JVs was reduced from 43 to 15, and the number of sectors requiring Chinese majority shareholding decreased from 44 to 35”, explains Mitch Dudek, partner in charge for Dentons Asia, noting liberalizations on foreign investment in the manufacturing, pharmaceutical, infrastructure, energy and entertainment sectors.

Herbert Smith Freehills' Chau expects an increase in diversity and quantity of their clients interested in foreign direct investment in part due to the catalogue's influence. “Overall, these changes will bring a positive influence upon the perceived investment climate in China and attract more potential participants from previously restricted and newly encouraged industrial sectors.”

无论自贸区进行了哪些改革, [不久]
就会在自贸区以外的地方推行

*Whatever reforms are introduced
in the FTZ will be soon ...
implemented outside the FTZ*



鄂丽福
Ulrike Glueck
CMS中国
管理合伙人
上海
Managing Partner
CMS China
Shanghai

些律师认为这些限制和《指导目录》上列出的项目并没有太大差别, 只是用了不同的术语分类而已。

另外, 在自贸区的一些投资项目会受到国家安全审查。国际安全审查也是新实施的《国家安全法》和即将全国实行的《外国投资法》的一个要点。关于在自贸区进行国家安全审查的试行办法自四月起实施, 可能为这些审查在全国的推广实施提供有益经验。

虽然很多律所提到他们的客户对自贸区项目表现出兴趣, 但某些律师注意到, 这种兴趣并没有转化成交易。CMS 中国公司业务负责人兼上海代表处管理合伙人鄂丽福 (Ulrike Glueck) 说, 他们的客户中还没有进入自贸区的。她指出, 总的来说, 除了经营电信领域的投资者, 其他客户要选择进入自贸区经营似乎并不明智。

“首先, 自贸区的基础设施成本比自贸区外要高。第二, 无论自贸区进行了哪些改革, 在短短半年至一年内就会在自贸区以外的地方推行,” Glueck 说, “例如, 从资本账户中取出注册资本并及时兑换成人民币的操作模式当时是首先在自贸区实行的, 现在已经推广至全国。另外, 外商投资企业使用注册资本对其他公司进行再投资的操作模式也是首先在自贸区实行的, 而从 6 月 1 日起已经开放至其他地方。所以, 这些改革很多都会在短时间内推广至自贸区外的其他地方。”

美国商会《2015 年中国商业报告》的结果也支持了这个观点。在大约 300 多家受访的美国公司中, 73% 的受访企业表示自贸区并未给其业务带来实际利益, 48% 表示自贸区并没有为其业务带来明显改变。但 35% 的受访公司表示, 自贸区使中国海关以及检验检疫服务部门的程序更加简化。

新境内投资制度即将登场

一月, 中国商务部发布了《外国投资法》草案征求意见稿。一旦通过, 该法将会取代现行的三部外商投资法, 即《中外合资经营企业法》、《中外合作经营企业法》以及《外资企业法》。

该草案意味着外国投资以及并购在中国的处理模式将会有明显的变化, 这个变化将会激起投资者不小的兴趣。的近律师事务所

Free Trade Zones

Changes in the catalogue reflect the trend for liberalizations on investment seen elsewhere in China, most overtly in the free trade zones (FTZ).

The China (Shanghai) Pilot Free Trade Zone was launched in 2013 to carry out reforms and innovations in the investment, foreign trade, professional services and financial sectors. In April, the FTZ have expanded to three additional areas of Shanghai, as well as in areas of Tianjin, Fujian and Guangdong, and further simplified investment procedures.

The FTZ are breeding and testing grounds for economic reforms, with many of the innovations soon expected to be replicated throughout the rest of the country. Among the most heralded of the reforms is the negative list for investment, which has been reproduced in the draft foreign investment law.

Unlike the catalogue, which groups industries as prohibited, restricted, encouraged and – for those not listed at all – permitted, the negative list only enumerates certain projects in key or sensitive industries including natural resources, mapping, stem cell research, broadcast and print media, education, professional services, manufacturing, finance, infrastructure, internet and telecommunications. However, several lawyers comment that the restrictions more or less remain the same as those in the catalogue, and are simply classified using different terminology.

Further, certain investments within the FTZ are subject to a national security review. The national security review is also a feature of the newly implemented National Security Law as well as the foreign investment law anticipated to be adopted nationwide in the near future. Provisional measures for national security reviews within the FTZ were implemented in April, and these may be guidance for how the national security reviews will be implemented nationwide.

While many firms report client interest in projects within the FTZ, some note that the interest does not translate into transactions. Ulrike Glueck, head of CMS China's corporate practice area and Shanghai office managing partner, says that they have not had a single client to go into the Shanghai Free Trade Zone. Generally, she points out, it does not make sense for their clients to go into business in the FTZ – apart from those certain industries where the benefit is unique to the FTZ, such as telecommunications.

“First, the infrastructure costs are higher inside the FTZ than outside”, she explains. “Second, whatever reforms are introduced in the FTZ will soon, within half a year to one year, be implemented outside the FTZ.”

“Withdrawing registered capital from a capital account and immediately exchanging that into RMB was first introduced in the FTZ and now is nationwide”, Glueck notes. “Also, foreign invested enterprises using registered capital to reinvest in other companies also was introduced first in the FTZ and now, as of 1 June, is open. So all of these reforms are also implemented outside the FTZ in a very short time frame.”

Results from the American Chamber of Commerce's 2015 China Business Survey support this view. Of the approximately 300 US companies polled, 73% stated that the FTZ offers no tangible benefits and 48% stated that it offered no noticeable changes for business. However, 35% stated that procedures from Customs and the China Inspection and Quarantine Services had been streamlined as a result of the FTZ initiative.

迈向反腐大道的建筑行业

中国的一项部级动态可能会为建筑行业带来重大的变化，建纬律师事务所高级合伙人邵万权说。隐藏于建筑行业中的常见腐败问题导致了项目的高价、在投标过程中的成本浪费以及缺乏保证的建筑质量——对于为社会大众利益而兴建的项目，其在公众心目中的形象会受到严重损害。

住房与城乡建设部一直把解决这类腐败问题作为近期工作的重点。在去年 8 月，该部门发起了“工程质量治理两年行动方案”。该计划旨在提高建筑项目的总体水平，计划提出要规范建筑市场秩序，建立健全的建筑市场诚信体系，遏制违法发包、转包、分包，并让该部门在项目管理中进一步发挥监管作用。

这个行动方案中还包含了建筑合同的重要立法——《建筑工程施工转包违法分包等违法行为认定查处管理办法（试行）》以及《住房城乡建设领域违法违规行为举报管理办法》，这两个办法分别于 2014 年 10 月以及 2015 年 1 月生效。同时，住房与城乡建设部宣布在 2014 年 11 月至 2016 年 6 月期间发起对建筑项目中的非法分包行为的打击行动。

邵万权所在的建纬律所参与了这两个办法的咨询工作。他指出，政府正在努力打击腐败行为，例如将工程发标给亲朋好友、将工程分包给原标书里没有提及的公司等行为，因为这些做法可能会导致质量的下降以及整个制度信誉的缺失。他说，上述两个管理办法生效后，他们律所看到了建筑行业的积极反响，他们的客户也在投标中向着提高透明度以及更廉洁的商业运作迈进。

合伙人兼中国业务负责人张永财说，这个草案将会废除近四十年来指导外商在中国投资的关键法律监管框架。

“这个法律草案将取消外商在中国投资所适用的全面审批制度，取而代之的是一个只需要有限准入许可以及长期报告的制度，”张永财说，“业界对此的看法非常积极，我们预计这次修订会催生不少的业务机会。我们预计进入中国的外国公司会大幅增加，进而有力带动对法律及其他专业服务的需求。”

浩天信和律师事务所驻北京合伙人姜江认为，预计将写入《外国投资法》的负面清单制度已经在自贸区试行，这对于律所来说应该是一项重要的变化。

虽然这个草案在正式被采纳前还需要经过进一步审议，很多人预料它肯定会通过。张永财表示：“可以这样理解，在中国有机会审视负面清单制度的实施成效之后，《外国投资法》生效的时机就到了。”

诺顿罗氏律师事务所北京代表处合伙人及负责人王昶提醒道，这个法律草案并不一定会受到外国投资者的热烈欢迎。“尽管它在某些领域去除了审批过程，但随之而来的是更严格的国家安全审查过程、中国投资规定的境外影响，以及加重对外国投资企业的报告要求。它也预示着 VIE 架构的终结，这个架构多年来被很多外国投资者用于投资科技领域。”

New inbound investment regime soon to come

In January, the Ministry of Commerce released a draft Foreign Investment Law for public comment. Once passed, the law is expected to replace the three existing foreign investment laws – the Sino-foreign Equity Joint Venture Law, the Sino-foreign Cooperative Joint Venture Law and the Wholly Foreign-owned Enterprises Law.

The draft law signals a radical transformation of how foreign investment and M&A deals would be handled in China and was met with considerable interest. Franki Cheung, partner and head of Deacons' China offices, explains that the draft provides for the repeal of the key legal regulatory structure that has guided foreign investment in China for nearly four decades.

“The draft law will abolish the comprehensive approval system that has been applicable to foreign investment in China and replace it with one that requires only limited entry permitting and ongoing reporting,” Cheung says. “This has been very positively viewed and we expect a lot of business opportunities to arise from this change. We expect a major increase in foreign companies going into China which in turn will lead to a strong demand for legal work and other professional services.”

Jiang Jiang, a partner of Hylands Law Firm based in Beijing, points out that the negative list expected to be a part of the new law that is currently undergoing a trial in the FTZs should be a major change for firms.

While the draft must undergo additional deliberation before it can be adopted, many envisage its inevitable passage. Deacons' Cheung notes, “it has been given to understand that the draft Foreign Investment Law will come into effect at such time after China has had a chance to review the results of the implementation of the negative list”.

Wang Yi, partner and head of Norton Rose Fulbright's Beijing office, cautions that the draft law may not be completely welcomed by the warm and open arms of foreign investors. “Although it will eliminate the foreign investment approval process in certain sectors, it comes with an increasingly strict national security review process, extraterritorial application of PRC investment rules and increased reporting requirements for foreign-invested companies”, she says. “It also signals the end of VIE structures, which had been used for years by foreign investors to set up certain investments in the technology sector.”

Further, Greg Knowles, partner and head of corporate of Maples and Calder's Hong Kong office, notes that the law, if passed, may impact the usage of Cayman Island or British Virgin Island vehicles for foreign investment into China. “The draft indicates that Chinese-controlled Cayman or BVI structures will be treated as domestic enterprises and there is some possibility that the Negative List will include fewer industries off-limits to foreign-controlled investments, thus permitting foreign access via offshore structures to a greater range of industries.”

Cayman and BVI companies listed on major international exchanges also may still be regarded as Chinese-controlled depending on share ownership, he notes. “These are all potential positives, although of course foreign-controlled VIE structures in prohibited sectors will no longer be possible it seems.”

Packing up VIEs

Since the release of the draft foreign investment law, one topic on many minds is what is to be done with variable interest

此外,迈普达律师事务所香港办公室合伙人以及公司业务负责人 Greg Knowles 表示,《外国投资法》草案将可能影响外国投资者使用开曼群岛或英属维尔京群岛 (BVI) 架构作为进入中国的工具。“这个草案意味着中方控股的开曼或 BVI 架构将会被视为国内企业,而且负面清单可能会减少禁止外商投资的行业,从而允许外国投资者通过离岸架构进入更广泛的行业。”

在重要境外交易所上市的开曼或 BVI 架构公司依据其股份权属,可能仍然会被视为中方控股的公司, Knowles 提到。“这些都是潜在的积极影响。当然在禁止类行业,再想使用外资控股的 VIE 架构似乎是不可能了。”

取消 VIE, 走向私有化

自从《外国投资法》草案在一月公布以来,很多人思考的一个问题是如何处理 VIE 架构。多年来,中国公司往往效仿“新浪模式”,利用 VIE 架构前往美国等国际资本市场上市。之所以称为“新浪模式”,是因为新浪网最先使用 VIE 架构于 2000 年成功在纳斯达克上市。相似地,外国投资者也使用 VIE 架构投资互联网、电信等《指导目录》中禁止外商投资的行业。

天达共和律师事务所驻北京合伙人陆志芳说,尽管 VIE 架构从来没有在中国法律中被清晰规定,但它们实际上是被默许的。但是他提到,这个草案规定公司国籍的判定应依据其实际控制人的国籍,而非公司的注册地。陆志芳说,在最近几个月,拆除 VIE 架构的工作量有所上升。

高锐律师事务所北京代表处公司与证券组合伙人顾家端也表示,拆除 VIE 架构的繁琐工作是目前最繁忙的一项业务。但是,他也指出,市场可能存在的周期性波动也是推动境外上市公司退市并拆除 VIE 架构的一个因素。“大约 18 到 24 个月前,中概股表现不是很好,当时有一些公司进行了私有化,例如分众传媒和盛大。我们曾经存在的担忧是,如果这些公司都退市,这个执业领域的未来将如何?”顾家端说,“但是之后就有阿里巴巴在美国上市以及一系列的 IPO 项目。”

[外国投资法草案]预示着VIE架构的终结

[The draft Foreign Investment Law] signals the end of VIE structures



王映
Wang Yi
诺顿罗氏律师事务所
北京代表处负责人
Head of Beijing Office
Norton Rose Fulbright

entities (VIEs). For many years, Chinese companies have created VIE structures to list in foreign markets such as the US, with many following the “Sina structure” – so dubbed for Sina.com’s pioneering use of a VIE to list on NASDAQ in 2000. Similarly, foreign investors have used VIE structures to invest in sectors restricted to foreign investment under the catalogue, such as internet and telecommunications.

While these structures were never explicitly stipulated in Chinese law, says Lu Zhifang, a partner of East & Concord Partners based in Beijing, they were effectively permitted. However, he notes, the draft law provides that the national origin of the company be determined based on that of its actual controller rather than where the company is registered. Lu reports an increase in work dismantling VIE structures in recent months.

Jerry Ku, a partner in the corporate and securities group of Gunderson Dettmer in Beijing, agrees that the complex process of dismantling VIE structures is one of the busiest areas at the moment. However, he notes the potentially cyclical cycle of the market as influencing the move to delist and dismantle VIEs. “About 18-24 months ago when the China concept stocks were not doing so well, and there was a wave of companies going private – Focus Media, Shenda – there was concern that, if all these companies delist, where does the practice go from there?” says Ku. “But then there was the Alibaba listing and the host of IPOs in the wake of that.”

“While the US stock markets will remain relatively attractive to a small number of large-scale Chinese internet companies,” says Simpson Thatcher’s Chen, “the recent wave of going private transactions involving US-listed Chinese companies signals a rapid change of direction in listing venues for most Chinese internet and technology companies due to the valuation gap between the Chinese stock markets and the US stock markets as a result of the strong performance of the China stock markets since late last year.”

Offshore still a popular destination

The VIE structures frequently found in offshore jurisdictions may be soon faced with increased scrutiny, but the appeal of offshore jurisdictions remains. Paul Christopher, the managing partner of Mourant Ozannes’ Hong Kong office, notes, “The market continues to adapt and change to new laws and regulations, the use of Cayman Islands and the British Virgin Islands, where appropriate, is still extremely strong.”

According to data released by Appleby in May in their *Offshore-i* report, China was the top onshore target for offshore outbound deals in the first quarter this year, with 89 deals at a value of US\$6.78 billion total. Hong Kong was also the busiest offshore acquirer by volume, with 151 deals at a total deal value of US\$13.1 billion.

“China is a significant market for offshore law firms and, as part of our Asia practice development, will continue to be a feature in the strategic plan for Appleby”, says Frances Woo, the group chairman and managing director of Appleby in Hong Kong, noting that Southeast Asia is seen as a growing region as well.

“The rise of the high net worth individual, particularly in this part of the world, may be the next big story”, Woo says. “The Boston Consulting Group highlights the growing volume of private wealth globally – up more than 14% to US\$152 trillion in 2013 – and wealth in the Asia-Pacific region (excluding Japan),

高净值人群的增加，特别是在这一地区，可能将成为下一个大热点

The rise of the high net worth individual, particularly in this part of the world, may be the next big story



胡麟斯
Frances Woo
毅柏律师事务所
集团主席
香港
Group Chairman
Appleby
Hong Kong

“虽然美国资本市场对少数大型的中国互联网公司仍然会较有吸引力，”来自盛信的陈磊明说，“最近一轮在美上市中国公司的私有化交易显示出，由于自去年底开始中国股市的强劲表现造成中美股市之间的估值差，不少中国互联网和科技公司在上市地点的选择上做出了急剧改变。”

离岸仍是热点

离岸法域常见的 VIE 架构不久可能面对更严格的监管，但离岸法域的魅力犹在。Mourant Ozannes 律师事务所香港管理合伙人 Paul Christopher 说：“市场会继续适应新的法律法规并随之变动，在适当的情况下，运用开曼和 BVI 架构仍是非常有优势的选择。”

根据毅柏律师事务所今年五月发布的报告，中国在今年第一季度仍然是离岸公司进行海外交易的首要目标，共有 89 项交易，交易额合计 67.82 亿美元。按照交易额计算，香港是最为繁忙的离岸收购方，共有 151 项交易，总额达 131 亿美元。

“对于离岸律所来说，中国是非常重要的市场，而且作为我们亚洲业务发展的一部分，中国将继续是毅柏战略计划的重点，”毅柏律师事务所集团主席及香港办公室管理合伙人胡麟斯说。她同时指出东南亚也是另一片正在成长的区域。

“高净值人群的增加，特别是在这一地区，可能将成为下一个大热点，”胡麟斯说。“波士顿咨询公司指出，全球个人财富的上升总量在 2013 年上升了超过 14%，达到 152 万亿美元。到 2018 年，亚太区除日本外的财富预计会翻倍达到 61 万亿美元。财富和需求的成长为离岸法律服务创造了新的机遇。”

《跨境担保外汇管理规定》去年生效，国家外汇管理局放松了外汇交易限制以促进中国海外投资。瑞生律师事务所亚洲业务主席兼香港办公室合伙人 Bryant Edwards 视之为重要的发展。“这些法规将会促进中国公司的离岸债券发行并拓展离岸融资渠道，使中国发行人的债券对经常担心次级架构的国际投资者更有吸引力，并将提高对中国公司的估值，”Edwards 说，“反过来，这又会进一步推动中国公司发行国际债券，这是我们中国业务的重要部分。”

is expected to almost double in value reaching US\$61 trillion by 2018. The rise in wealth and demand creates opportunity for offshore legal services.”

Bryant Edwards, chair of Latham & Watkins's Asia practice and a partner in the firm's Hong Kong office, sees significant development from the State Administration of Foreign Exchange's move to loosen constraints on transactions of foreign exchange to facilitate Chinese investment offshore in the Regulations on the Administration of Cross-border Guarantee of Foreign Exchange that took effect last year.

“These rules will facilitate offshore bond offerings and other offshore financings by Chinese companies, make their bonds more attractive to international investors, who have always worried about structural subordination, and should improve the pricing for Chinese companies,” says Edwards. “This, in turn, will continue to grow the market for international bonds issued by Chinese companies, which is an important part of our Chinese business.”

Construction ministry moves to curb corruption

One development at the ministerial level could signal considerable change in the construction industry, notes Kevin Shao, senior partner of City Development and the vice chief of the firm's land department. The oft-hidden corruption in the construction industry results in overpriced projects, wasted expenses on tendering bids and lack of faith in build quality – a great harm in public perception of useful projects created for the greater good.

The Ministry of Housing and Urban-Rural Development (MOHURD) has made tackling this corruption a key focus for the near future. In September last year, MOHURD launched its Two-year Action Plan on Quality Management in Projects. Aimed at improving the overall level of construction projects, the plan calls for regulating the construction market order, instituting a clear project accountability system, curbing illicit contracting and subcontracting and creating a greater role for the ministry in project supervision.

Accompanying the action plan included important legislation on contracting – the provisional Measures on the Administration of Identifying and Handling Violations of the Law in the Housing and Urban and Rural Construction Projects and the Measures for the Administration of Reporting Violations of the Law in the Housing and Urban and Rural Construction Projects, effective October 2014 and January 2015 respectively. At the same time, MOHURD announced a crackdown on unlawful subcontracting in construction projects to be launched from November 2014 through June 2016.

Shao's firm participated in the consultations for the measures. He points out that the efforts to fight corrupt practices such as awarding bids to friends and family and subcontracting work to firms not mentioned in the original bid can result in a potential loss of quality, as well as loss of trust in the system. Since the measures took effect, he says, his firm has seen positive response in the construction industry, as clients to move to increased transparency in their bids and cleaner business practices.