

GARRIGUES

NEWSLETTER

LEGAL INSIGHTS ON
THE CHINESE LAWS

OCTOBER 2017



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NAME	DATE OF EFFECTIVENESS	GARRIGUES INSIGHT
<p>法释[2017]16号 最高人民法院关于适用《中华人民共和国公司法》若干问题的规定(四)/</p> <p>Fa Shi [2017] No.16 Provisions of the Supreme People's Court on Several Issues Concerning the Application of the Company Law of the People's Republic of China (IV)</p>	01/09/2017	<p>It aims to ensure the correct application of the Company Law of the People's Republic of China, in the light of judicial practices of the people's courts, provisions on issues concerning the application of the law to cases with respect to the effectiveness of corporate resolutions, shareholders' information rights, right to share profits, first-refusal right, and shareholder representative litigation.</p> <ol style="list-style-type: none"> i. It introduces the concept of non-existent corporate resolution and provides detailed applicable circumstances. Besides it provides procedural rules on nullified, rescinded and non-existent resolutions. ii. It reinforces that the legitimate shareholders' information right cannot be deprived via any agreement between the parties, e.g. the articles of association. iii. It confirms the formality regarding profit distribution. By presenting a valid resolution in respect of detailed distribution plan, the shareholder could take advantage of judicial force to guarantee its exercise of dividend right. Without an aforementioned valid resolution, on condition that the shareholder is able to prove that the rejection of distribution is the abuse of shareholder's rights and causes damages to other shareholders, the claim may still be supported by the court. iv. It provides more detailed operative provisions on the exercise of right of first refusal. v. It also clarifies several procedural issues regarding shareholder representative litigation, e.g. the interests obtained from the winning of the litigation shall be owned by the company.
<p>中华人民共和国商务部令2017年第2号 关于修改《外商投资企业设立及变更备案管理暂行办法》的决定/</p> <p>Order of the Ministry of Commerce of the People's Republic of China [2017] No.2 Decision on Revising the Interim Administrative Measures for the Record-filing of the Incorporation and Change of Foreign-invested Enterprises</p>	30/07/2017	<p>It has made the modifications on the following aspects:</p> <ol style="list-style-type: none"> i. The following situations shall be subject to the record-filing system if special administrative measures are not applicable: <ul style="list-style-type: none"> • Where a non-foreign-invested enterprise changes into a foreign-invested enterprise due to acquisition, consolidation by merger or otherwise ; • Change of the basic information about the merger and acquisition transaction of the incorporated foreign-invested enterprise; • Where a foreign investor makes a strategic investment into a non-foreign-invested listed company ; • Where a foreign-invested listed company introduces a new foreign investor to make strategic investment.

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ii. The following documents shall be additionally submitted via online filing system in applicable situations:

- Share structure of the ultimate beneficiary controller of the foreign-invested enterprise, in case of incorporation and modification related to the ultimate beneficiary controller;
- A Certificate for Outbound Investment by an Enterprise of a domestic enterprise, in case a foreign investor pays with the equities of an overseas company to the aforesaid domestic enterprise in related transaction.

国办发[2017]74号 | 国务院办公厅转发国家发展改革委、商务部、人民银行、外交部关于进一步引导和规范境外投资方向指导意见的通知

04/08/2017

For the purpose of further guiding, regulating and promoting the development of outbound investments, on the basis of current regulating rules, it further classified the outbound investments into three categories, i.e. encouraged, restricted and prohibited:

Guo Ban Fa [2017] No.74 | Circular of the General Office of the State Council on Forwarding the Guiding Opinions of the National Development and Reform Commission, the Ministry of Commerce, the People's Bank of China and the Ministry of Foreign Affairs on Further Guiding and Regulating the Outbound Investment Direction

i. Domestic enterprises are prohibited to take part in the outbound investment projects that harm or are likely to harm national interests or national security.

ii. It provides that outbound investments in five aspects shall be included in the restricted category, such as outbound investment in real estate, hotels, cinemas, entertainment, sports clubs and equity investment funds or platforms without specific industrial projects etc..

iii. The outbound investments in the encouraged category would enjoy several preferential policies regarding taxation, foreign exchange, insurance, custom, information etc., which expect to be further legislated by relevant authorities in the future.

Apart from a series of preferential policies to be issued in the near future, it also refers several new systems will be implemented to regulate the outbound investments, such as "the blacklist system for overseas investment" and "the capital fund rules for outbound investment made by state-owned enterprises".

OTHER LAWS AND REGULATIONS

1. 中华人民共和国核安全法/
Nuclear Security Law of the People's Republic of China
2. 全国人民代表大会常务委员会关于修改《中华人民共和国法官法》等八部法律的决定/
Decision of the Standing Committee of the National People's Congress on Amending Eight Laws Including the Judges Law of the People's Republic of China
3. 最高人民法院关于废止部分司法解释和司法解释性质文件（第十二批）的决定/
Decision of the Supreme People's Court on Repealing Some Judicial Interpretations and Judicial Interpretative Documents (the Twelfth Batch)
4. 拍卖监督管理办法/
Administrative Measures for the Supervision of Auctions
5. 国务院关于取消一批行政许可事项的决定/
Decision of the State Council on Cancelling A Batch of Administrative Approval Items
6. 无证无照经营查处办法/
Measures for Investigating and Punishing Unlicensed Business Operations
7. 国务院关于修改《建设项目环境保护管理条例》的决定(2017)/
Decision of the State Council on Revising the Administrative Regulations on the Environmental Protection of Construction Projects
8. 国务院关于在更大范围推进“证照分离”改革试点工作的意见/
Opinions of the State Council on Expanding the Pilot Reform of Separating Operating Permits and Business Licenses to a Larger Extent
9. 国务院关于促进外资增长若干措施的通知/
Circular of the State Council on Several Measures to Boost the Growth of Foreign Investment
10. 商务部、海关总署、税务总局、质检总局、外汇局关于促进外贸综合服务企业健康发展有关工作的通知/
Circular of the Ministry of Commerce, the General Administration of Customs, the State Administration of Taxation, the General Administration of Quality Supervision, Inspection and Quarantine and the State Administration of Foreign Exchange on Relevant Work to Promote the Healthy Development of Enterprises Providing Integrated Foreign Trade Services
11. 关于印发《外商投资企业知识产权保护行动方案》的通知/
Circular on Issuing the Action Plan for the Protection of Intellectual Property Rights Owned by Foreign-invested Enterprises

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