

# CHINA LEGAL BRIEFING\* 227

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# China's 12th Five-Year Plan on Foreign Investment Utilization and Outbound Investment

“十二五”利用外资和境外投资规划

<b>【Issued by】</b>	National Development and Reform Commission
<b>【Subject】</b>	Investment
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National Development and Reform Commission (“NDRC”) on 24 July 2012 released China’s 12th Five-Year Plan on Foreign Investment Utilization and Outbound Investment which covers the time period from 2011 to 2015 (hereinafter “Plan”). It encompasses the guiding principles, key objectives, tasks as well as related governmental measures in terms of utilizing foreign investment and investing abroad.

According to NDRC, this Plan is a significant sequel of 11th Five-Year Plan on Foreign Investment Utilization, spotlighted by two progresses in comparison with the previous plan – it coordinates both international and domestic aspects and reconciles “bringing in” and “going global” in a better manner. The Plan is envisaged to further foster the opening-up and provide transparent administration in association with predictable investment environment.

## **The situation during the 11th five years’ period**

Inbound investment in Mainland China accumulatively accounted for 478.94 billion dollars. There was tremendous progress that inbound investment matched into the 3rd industry, with the consequence that the industry that foreign investment involved in China was upgraded. In addition, the research and development centers founded by transnational companies in China continuously increased and the total number reached 1,400. The geographic allocation of foreign investment stroke a better balance, i.e. the inbound investment gradually entered the Middle and Western region.

Outbound investment also experienced an eye-catching rise, reaching accumulatively 228.92 billion dollars with 34.3% annual rise. The industries of outbound investment concentrated on mining, energy resource, commercial service, etc. SOEs (State Owned Enterprises) were still the dominant players and private enterprises were gradually perking up. Apart from the natural resource exploitation, Chinese outbound investment tended to enter high-tech and advanced manufacture industries. Multiple forms of investment were employed, such as merger & acquisition, share purchase or exchange, investment fund, etc.

## **The guiding principles for the 12th five years’ period**

Inbound and outbound investments are due to bolster the transition of China’s economic development model, i.e. investment should switch from focusing on quantity and speed to focusing on quality and efficiency. Opening-up is further enshrined, which implies deeper and broader opening up is foreseeable.

## **The objectives**

- Stabilize the scale of foreign loan and utilize it efficiently
- Improve the quality of inbound investment and guide it to foster China's domestic industry upgrade, optimize structure, promote technology innovation, and balance regional development.
- Expand outbound investment by exploring more forms, focusing on the important fields. Strive to cultivate some internationally competitive and well known transnational companies and brands.
- Foster the interaction of “introducing in” and “going global”, and form the international cooperation and new competitive strengths, whereby to realize the reciprocity between the external and the internal as well as establish a stable, efficient and open economy.

## **The major tasks**

### Inbound investment

- Improve the quality of inbound investment. Selective mechanism for inbound investment should accompany with the combination of “introducing capital” and “introducing talents”. Inbound investment is encouraged to enter strategic emerging industries, e.g. advanced manufacture, high and new technology, energy saving and environment protection, ecological construction, new energy. Besides, inbound investment is particularly welcome to invest in logistics, IT development, project design, work skill training, information consultation, intellectual property service, etc. The sectors, e.g. banking, securities, insurance, telecom, natural gas, logistics, education and sports will be gradually opened up.
- Encourage inbound investment to go to the middle and western region. Investment in the eastern region shall focus on improving the quality; investment in the middle and western could develop labor-intensive industry.

### Outbound investment

- Encourage qualified enterprises to acquire financing from international financial markets via issuing bonds. Encourage domestic institutions to issue RMB bonds in Hong Kong or overseas.
- Outbound investment shall safeguard the resource demand of domestic development. Four focuses are identified: energy resource and mining projects, infrastructure construction, agriculture investment, technology and intellectual property rights.
- Strengthen the Chinese enterprises' competitiveness and capability. Chinese companies should explore the market abroad, strive to build internationally well-known brands and produce higher value-added products. Meanwhile, the small and middle sized companies as well as private companies are encouraged to go global.

## **The key policies and measures**

### Inbound investment

- Reinforce the inbound investment guidance and improve the internal investment environment. The guidance is envisaged to meet the goals of the industries upgrade plan and the geographical balance plan. Foreign companies are encouraged to cooperate with Chinese companies in R&D. As for improving the internal investment environment, the state will continuously

endeavor to protect fair market competition, provide transparent and stable political environment, simplify the foreign investment's approval procedures, and strengthen intellectual property rights protection.

- Strive to establish uniform laws and regulations regarding the setting-up, operation, finance, supervision and settlement for foreign invested companies.
- Support the green field investment; continuously exercise state security review for M&A.

#### Outbound investment

- Enhance the specific guidance for outbound investment in different countries and encourage Chinese companies to comply with the local laws and regulations, respect the local environment protection, and meet the required corporate social responsibility (“CSR”) standards.
- Provide convenient financing channels in conjunction with tax and financial support. Simplify the approval procedures and improve the administrative efficiency. Foster foreign exchange reform by promoting RMB in cross border trade and investment.
- Encourage Chinese companies to list in foreign capital markets to retain extensive financing channels.
- Study the possibility of increasing China's oil reserve through utilizing the foreign reserve. Moreover, try to reverse the imbalanced situation of China's balance of payments by encouraging outbound investment.
- Strengthen the supervision and insurance so as to mitigate risk. Establish better legal framework to protect outbound investment via negotiating more bilateral or multilateral investment treaties, tax agreements, judicial assistance agreements, etc. For negotiations of BIT (Bilateral Investment Treaty) or MIT (Multilateral Investment Treaty), balancing “introducing in” and “going global” is the cardinal mandate.

## Notice of the Ministry of Finance and the State Administration of Taxation on Launching the Pilot Program of Replacing Business Tax with Value-added Tax in the Transportation Industry and Certain Modern Service Sectors in Beijing Municipality and Other Seven Provinces and Cities

财政部、国家税务总局关于在北京等8省市开展交通运输业和部分现代服务业营业税改征增值税试点的通知

**【Issued by】** Ministry of Finance, State Administration of Taxation

**【Subject】** Taxation

**【Promulgated on】** July 31, 2012

**【Effective from】** August 1, 2012

**【Source】** [http://szs.mof.gov.cn/zhengwuxinxi/zhengcefabu/201208/t20120802\\_671544.html](http://szs.mof.gov.cn/zhengwuxinxi/zhengcefabu/201208/t20120802_671544.html)

On 31 July 2012 the Ministry of Finance in association with the State Administration of Taxation promulgated the Notice on Launching the Pilot Program of Replacing Business Tax with Value-added Tax in the Transportation Industry and Certain Modern Service Sectors in Beijing Municipality and Other Seven Provinces and Cities (hereinafter "Notice") which entered into force on 1. August, 2012.

### **Pilot areas**

Upon the approval by the State Council, the areas covered in the pilot program of replacing business tax with value-added tax in the transportation industry and certain modern service sectors shall be expanded from Shanghai municipality to other eight provinces (municipalities directly under the Central Government), i.e. Beijing municipality, Tianjin municipality, Jiangsu Province, Anhui Province, Zhejiang Province (including Ningbo municipality), Fujian Province (including Xiamen municipality), Hubei Province, Guangdong Province (including Shenzhen municipality).

### **The commencing date of the pilot program**

The pilot areas shall start to implement and carry out the pilot program from 1. August, 2012. However, the concrete dates of completing the conversion from the old taxation system to the new taxation system for different pilot areas vary: Beijing municipality shall complete the conversion by 1. September; Jiangsu Province and Anhui Province shall complete the conversion by 1. October; Fujian Province and Guangdong Province shall complete by 1. November, 2012; Tianjin municipality, Zhejiang Province and Hubei Province shall complete by 1. December.

#### **The contents of the pilot program**

- The pilot program applies to the transportation industry and certain modern service sectors which include R&D and technology service, information technology service, culture and creativity service, logistics facilitation service, tangible movable assets' leasing service, evaluation and consultation service. The taxpayer in the aforesaid industry and sectors shall pay VAT instead of business tax upon the completion of the conversion to the new taxation system in the pilot area concerned.
- On the basis of the present two tax rates of VAT 17% and 13%, two new tax rates will be added. A tax rate of 11% will apply to transportation, a 6% tax rate to some modern service sectors (R&D and technology service, information technology service, culture and creativity service, logistics facilitation service, evaluation and consultation service); the 17% tax rate applies to tangible movable assets' leasing service. In the case that a taxpayer provides qualified international transportation service or R&D and technology service abroad, nil tax rate applies.
- The previous reduction and exemption of business tax are accordingly converted to VAT exemption and tax rebate. The taxpayer providing qualified project investigation service abroad could enjoy VAT exemption.
- If a regular tax payer purchases the taxable service from taxpayer in the pilot areas, the input tax could be offset.

## New revision of the PRC Civil Procedure Law

中华人民共和国民事诉讼法最新修订

**【Issued by】** Standing Committee of the National People's Congress

**【Subject】** Civil Procedure

**【Promulgated on】** August 31, 2012

**【Effective Date】** January 01, 2013

**【Source】** [http://news.xinhuanet.com/legal/2012-08/31/c\\_112921601.htm](http://news.xinhuanet.com/legal/2012-08/31/c_112921601.htm)

The Standing Committee of the National People's Congress promulgated the new revision of the PRC Civil Procedure Law on 31. August, 2012 and the revised Civil Procedure Law will come into force on 1. January, 2013. This revision puts forward several significant changes and the highlights are presented as follows:

### **Introduction of public interest litigation**

In order to address the challenges coming from the often-occurred environment pollution incidents and food safety incidents, public interest litigation is incorporated into the Civil Procedure Law. Article 55 stipulates that with regard to the acts that impair the public interest, such as polluting environment, infringing the vast consumers' interest, the authorities and organization that law empowers can file a claim to the competent People's Court.

### **Electronic data as legal evidence**

In addition to the conventional seven types of evidences laid down in article 63, electronic data is recognized as a new type of evidence, which certainly corresponds to the development of communication means in modern society. Furthermore, a new means of dispatching litigation documents is introduced, i.e. fax, email are acknowledged as a valid dispatching means (except for dispatching judgments, rulings and mediation statements).

### **Introduction of act preservation**

On the tope of the property preservation, act preservation is introduced into Civil Procedure Law. In fact act preservation has been stipulated in the PRC laws relating to intellectual property rights so as to prevent the occurrence of infringement or the enlargement of the damage resulting from infringement. This new introduction leads to that act preservation will apply beyond IPRs. The provision notes that where due to the acts taken by one of the parties it becomes impossible or difficult to enforce a judgment or incurs damage to other party, upon the request of the other party or the People's Court deems necessary, the People's Court can order act preservation.

### **Punish malicious litigation**

In light of innocent victims, less efficiency of the judicial system, impaired social credibility resulting from malicious litigation, the new revision expressly punishes malicious litigation by imposing administrative or criminal liabilities to the parties that seriously infringe the third party's interest or avoid due legal obligations by bringing litigation, arbitration or mediation.

### **Court's ruling on setting aside arbitral award**

The new revision stipulates that the decision of a People's Court on setting aside an arbitral award shall take the form of a ruling. Hence, both the court's decisions on setting aside and not enforcing an arbitral award are rulings which are not subject to appeal. Besides, the revision poses certain conditions on the content of ruling, i.e. it shall explicitly state the result and reasons.

### **The public can consult the legally binding judgments and rulings**

In order to strengthen the public supervision over judicial systems, the new revision grants the public with the right to consult the legally binding judgments, rulings, except for national secrets, commercial secrets and individual privacy.

### **Small- claims litigation**

It is the first time that the Civil Procedure Law stipulates the small-claims litigation. The summary procedure already exists in the Civil Procedure Law and has tremendously contributed to the efficiency and lower costs of the procedure. The new revision now carves out a part of cases that would have to apply summary procedure, and sets up a separate procedure for them. The basic People's Court and its dispatched tribunal have the jurisdiction over the small-claims disputes, i.e. disputes with a claim value below 30% of the average annual salary of employees in the previous year. The judgment of the first instance in the small-staked litigation is final and not subject to appeal.

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