外商投资要闻简讯

JUNHE

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《最高人民法院关于认可和执行台湾地区法院民事判决的规定》和《最高人民法院关于认可和执行台湾地区仲裁裁决的规定》公布，使人民法院认可和执行台湾地区的判决和仲裁的制度更加明确和完善。交通运输部修改《外商独资船务公司审批管理暂行办法》，进一步放宽外商独资船务公司的市场准入条件。中国人民银行发布了《中国人民银行关于境外央行、国际金融组织、主权财富基金运用人民币投资银行间市场有关事宜的通知》，进一步放宽境外机构投资者投资境内银行间市场的要求。

一、 《最高人民法院关于认可和执行台湾地区法院民事判决的规定》和《最高人民法院关于认可和执行台湾地区仲裁裁决的规定》公布

最高人民法院于 2015 年 6 月 29 日公布《最高人民法院关于认可和执行台湾地区法院民事判决的规定》（下称“**《新判决认可规定》**”）和《最高人民法院关于认可和执行台湾地区仲裁裁决的规定》（下称“**《新仲裁认可规定》**”），自 2015 年 7 月 1 日起施行，使人民法院认可和执行台湾地区的判决和仲裁的制度更加明确和完善。

（一）背景

1998 年，《最高人民法院关于人民法院认可台湾地区有关法院民事判决的规定》施行，台湾地区的民事裁判和仲裁在大陆的认可和执行首次有了法律依据。此后十余年间，最高人民法院又陆续发布了三个司法解释，对于认可和执行台湾地区的民事裁判和仲裁的相关问题进一步予以明确，具体包括：1999 年的《最高人民法院关于当事人持台湾地区有关法院民事调解书或者有关机构出具或确认的调解协议书向人民法院申请认可人民法院应否受理的批复》、2001 年的《最高人民法院关于当事人持台湾地区有关法院支付命令向人民法院申请认可人民法院应否受理的批复》、以及 2009 年的《最高人民法院关于人民法院认可台湾地区有关法院民事判决的补充规定》。

最高人民法院对此前的四个司法解释（以下合称“**《旧认可规定》**”）的相关规定进行了系统梳理，在制定《新判决认可规定》的同时，将原本仅规定为参照适用判决认可制度的仲裁认可制度单独拆分出来，制定了专门的《新仲裁认可规定》。该两个新规定自 2015 年 7 月 1 日起施行，《旧认可规定》同时废止。

（二）法律点评

1. 关于《新判决认可规定》

《新判决认可规定》并未对依据《旧认可规定》建立的制度进行根本性改变，而是以较清楚的体系重新确认了既有的规则，并对过去规范不明确处予以厘清。尽管如此，《新判决认可规定》中还是能看见诸多新亮点，以下分项说明：

（1） 增加了能够认可的法律文件类型

i. 经法院核定的乡、镇、市、区调解委员会调解书

台湾各地的基层自治组织（乡、镇、市、区）设有调解机构，可以针对民事纠纷进行调解。依照台湾地区法律，此类调解书经法院核定后，效力等同于生效判决。然而，依据《旧认可规定》，该类非由法院主持的调解无法获得人民法院认可。《新判决认可规定》则明文将其纳入可认可的法律文件类型。

ii. 和解笔录

过去人民法院虽然可以认可台湾法院做出的调解书（台湾称为“调解笔录”），但不能认可台湾法院做出的“和解笔录”（诉讼当事人在法院达成的和解协议）。但依照台湾地区的法律，“和解笔录”的效力等同于生效判决。《新判决认可规定》将“和解笔录”纳入了可认可的文件类型。

iii. 刑事附带民事诉程序中的判决、裁定及和解笔录。

《旧认可规定》没有说明是否应认可台湾法院的刑事附带民事诉讼所产生的关于民事法律关系的法律文件。《新判决认可规定》则明文允许认可附带于刑事诉讼中、关于民事损害赔偿的判决、裁定或和解笔录。

《新判决认可规定》增加以上几种文件类型后，在台湾地区能终局性解决民事纠纷的各种法律文件都已能够获得人民法院的认可。

（2） 增加可选择的管辖法院

依据《旧认可规定》申请认可台湾地区的裁判，可以选择的管辖法院只有申请人住所地、经常居住地和被执行财产所在地的中级人民法院；《新判决认可规定》则增加了被申请人的住所地和经常居住地的中级人民法院，以及这五类地点的专门人民法院。

（3） 保全措施

过去，拟申请认可台湾地区裁判的人只能在提出认可申请的同时申请保全措施。《新判决认可规定》规定无论申请认可之前或之后都可以按照民事诉讼法及相关司法解释申请保全措施。

（4） 人民法院的诉讼不因申请认可而中止，已在人民法院起诉的案件不得再申请认可

过去，对于已向人民法院起诉的案件，如果当事人又申请认可台湾地区的判决，人民法院必须先中止诉讼，待认可台湾判决的程序有结果后，才能决定是否继续进行诉讼。《新判决认可规定》对于已经向人民法院起诉的案件，以人民法院的诉讼为优先，不但不需要中止，还应该不受理认可台湾判决的申请。

（5） 申请认可和执行的期限比照民事诉讼法的执行时效

《新判决认可规定》要求申请认可和执行的时效应适用民事诉讼法关于执行时效的规定。虽然如此适用后申请认可和执行的年限规定与过往规定一致，但不同之处在于现在可以适用关于诉讼时效的较为完整的中止和中断的制度。

（6） 申请认可关于身份关系的判决不受时效的限制

过去对于申请认可台湾法院裁判的时效，并没有考虑案件的性质做区别。《新判决认可规定》则对于认可关于身份关系的判决，排除时效的限制。

（7） 委托方式的简化

过去，关于申请认可或执行的委托书一概必须公证。按照《新判决认可规定》，大陆人民出具的委托书不再需要公证；台、港、澳居民或外国人在

人民法院法官的见证下签署的委托书也不需要公证。

（8） 缺席判决的特别受理条件

《新判决认可规定》在申请认可的台湾判决为缺席判决的情形下增加了一项受理条件：要求申请人提交台湾的法院曾经合法传唤对方当事人的证明，但是判决书本身已就此点作出说明的除外。

（9） 明文规定驳回申请后仍可再次申请

《旧认可规定》未就人民法院因不能确定申请认可的文件是否真实且已生效而“驳回申请”后是否可再次申请作出规定。《新判决认可规定》明文允许驳回申请后仍可就同一案件再次申请。

（10） 申请案件的救济途径

《新判决认可规定》对于申请认可或执行不被受理的情形，比照民事诉讼法起诉不予受理的情形，给予申请人上诉的机会；针对申请认可被裁定驳回或被裁定不予认可的情形，则给予复议的救济途径。

（11） 结合两岸司法互助机制

《新判决认可规定》也将 2009 年两岸之间建立的司法互助机制收纳其中。司法互助不仅适用于送达法律文书，还可用于调查法律文件的真实性和效力、以及当事人是否经过合法传唤。

2. 关于《新仲裁认可规定》

《新仲裁认可规定》的条文构架大致与《新判决认可规定》相仿，与《新判决认可规定》相对比，新亮点包括以下几点：

（1） 明文允许认可仲裁程序的和解与调解

台湾的仲裁程序中，如果达成和解或调解协议，会分别制作和解书或调解书，而不会制作裁决书（台湾称“判断书”）。过去是否允许认可台湾地区的仲裁和解书或仲裁调解书，并不明确，《新仲裁认可规定》则明文规定，台湾地区仲裁裁决包括仲裁判断、仲裁和解和仲裁调解。

（2） 将临时仲裁裁决纳入可认可范围

过去人民法院只认可台湾地区的仲裁机构作出的仲裁裁决，而不认可在台湾地区由临时仲裁庭作出的仲裁裁决。《新仲裁认可规定》则允许人民法院认可临时仲裁庭在台湾地区按照台湾地区仲裁规定作出的仲裁裁决。

（3） 专为仲裁制定认可条件

《旧认可规定》主要就判决的认可作出规定，对于仲裁的认可则只能参照适用判决认可规定。《新仲裁认可规定》首次针对仲裁的特性专为仲裁制定了认可条件。

（4） 考虑了在台湾撤销仲裁的情形

《旧认可规范》未针对申请认可的台湾仲裁又在台湾被起诉撤销的情形作规定。《新仲裁认可规定》则明确规定，此种情形下，允许被申请人提供担保后申请人民法院中止认可或执行程序；如果仲裁裁决被撤销，则不予认可或终结执行；如果被维持，则恢复认可或执行程序。

（三）关注要点

《新判决认可规定》和《新仲裁认可规定》标志着台湾地区的民事纷争解决的法律文件在人民法院认可与执行的法律制度进入更加健全、完整的阶段。

两份新规定在保全措施、申请时效和申请费用等方面均规定比照适用我国民事诉讼法的一般规

定，但就具体如何适用或参照适用并无清晰的指引。例如，就申请费用收取规定应参照《诉讼费用交纳办法》，但未明确是应参照案件受理费的标准收取，还是应参照执行申请费的标准收取；而过往的司法实践中则存在不收费、或者收取案件受理费两种做法。对于此类问题，还需要观察往后的司法实务和司法解释才能得出结论。

两份新规定的出台，是否将影响两岸人民对于民事纷争的解决方式和地点的选择，是否将有更多的台湾居民尝试对其债务人在大陆的资产申请强制执行，更是值得持续关注。

二、 交通运输部修改《外商独资船务公司审批管理暂行办法》

2015 年 7 月 5 日，交通运输部公布了《关于修改<外商独资船务公司审批管理暂行办法>的决定》，进一步放宽外商独资船务公司的市场准入条件。

（一）背景

2000 年 1 月 28 日，对外贸易经济合作部（后变更为商务部）、交通部（后变更为交通运输部）联合公布了《外商独资船务公司审批管理暂行办法》，对外商独资船务公司市场准入条件、申请文件、设立程序、经营范围、最低注册资本等作出了规定。

2011 年 8 月 15 日，为了进一步促进国际航运业的发展，交通运输部公布了《关于加强外商独资船务公司审批管理工作的通知》，适当放宽外商独资船务公司（包括外商独资船务公司及其分公司）市场准入条件和经营范围，调整外商独资船务公司申请设立的程序。

2015 年 7 月 5 日，交通运输部决定修改《外商独资船务公司审批管理暂行办法》，并将其更名为《外商独资船务公司审批管理办法》。

（二）法律点评

《外商独资船务公司审批管理办法》的主要修订内容如下：

首先，取消有关注册资本的限制：（1）取消外商独资船务公司的注册资本不得低于 100 万美元的限制；（2）取消外商独资船务公司设立分公司时需已全部缴付注册资本的要求；（3）取消每增设一家分公司应增加 12 万美元以上注册资本的要求。

其次，延续《关于加强外商独资船务公司审批管理工作的通知》有关放宽外商独资船务公司市场准入条件的规定和经营范围的规定。主要体现在：

（1）允许外国航运公司根据需要直接在我国境内投资设立外商独资船务公司，不必先行设立常驻代表机构；

（2）允许外国航运公司在其具有稳定货源或客源的对外开放口岸城市设立外商独资船务公司；

（3）外商独资船务公司开业满 1 年后，可在具有稳定货源或客源的其他对外开放口岸城市设立独资船务公司分公司。

（4）允许外商独资船务公司或其分公司从事揽客、出具客票业务。 这意味着外国邮轮公司可以在国内设立独资的船务公司，为外国邮轮公司的船舶提供揽客、签发客票在内的辅助性经营活动。

最后，延续《关于加强外商独资船务公司审批管理工作的通知》有关省级商务主管核准设立申请的规定，且进一步简化外商独资船务公司设立程序。设立程序调整为：（1）取得省级商务主管部门设立批准（省级商务部门在征求交通运输部同意后

予以批准）；（2）办理设立登记；（3）取得《外商独资船务公司经营许可证》。

（三）关注要点

《外商独资船务公司审批管理办法》能否进一步促进外商投资船务公司的发展，值得我们进一步关注。

三、 中国人民银行发布《中国人民银行关于境外央行、国际金融组织、主权财富基金运用人民币投资银行间市场有关事宜的通知》

2015 年 7 月 14 日，中国人民银行发布了《中国人民银行关于境外央行、国际金融组织、主权财富基金运用人民币投资银行间市场有关事宜的通知》（以下简称“**《通知》**”）进一步放宽境外机构投资者投资境内银行间市场的要求。

（一）背景

2000 年 4 月 30 日，中国人民银行发布了《中国人民银行关于全国银行间债券市场债券交易管理办法》。根据该法，只有在中国境内具有法人资格的商业银行及其授权分支机构、在中国境内具有法人资格的非银行金融机构和非金融机构、以及经中国人民银行批准经营人民币业务的外国银行分行，才能从事债券交易业务。

2010 年 8 月 16 日，中国人民银行发布了《中国人民银行关于境外人民币清算行等三类机构运用人民币投资银行间债券市场试点有关事宜的通知》。根据该通知，境外中央银行或货币当局，香港、澳门地区人民币业务清算行以及跨境贸易人民币结算境外参加银行三类机构，在向中国人民银行申请并经其同意后，可在核准的额度内在银行间债券市场从事债券投资业务。

2013 年 3 月 13 日，中国人民银行发布《中国人民银行关于合格境外机构投资者投资银行间债券市场有关事项的通知》。根据该通知，获得中国证券监督管理委员会核发合格投资者资格及国家外汇管理局核批投资额度的合格投资者可以向中国人民银行申请进入银行间债券市场，经中国人民银行同意后，合格投资者可以在获批的投资额度内投资银行间债券市场。根据《合格境外机构投资者境内证券投资管理办法》，合格的境外机构投资者是指符合该办法的规定，经中国证券监督管理委员会批准投资于中国证券市场，并取得国家外汇管理局额度批准的中国境外基金管理机构、保险公司、证券公司、以及其他资产管理机构。

为进一步提高境外央行或货币当局、国际金融组织、主权财富基金（以下统称“**相关境外机构投资者**”）投资银行间市场的效率，2015 年 7 月 14 日，中国人民银行发布了《通知》，进一步放宽境外机构投资者投资境内银行间市场的要求。

（二）法律点评

根据《通知》，相关境外机构投资者进入银行间市场的相关申请程序从审批制简化为备案制，即相关境外投资者只需要通过原件邮寄或银行间市场结算代理人递交等方式向中国人民银行提交中国银行间市场投资备案表，备案完成后即可开展相关业务。

同时，相关境外机构投资者投资银行间市场没有投资额度的限制，可自主决定投资规模。在投资范围上，相关境外机构投资者可在银行间市场开展债券现券、债券回购、债券借贷、债券远期，以及利率互换、远期利率协议等其他经中国人民银行许可的交易。

此外，《通知》特别说明，相关境外投资者应作为长期投资者，基于资产保值增值的合理需要开

展交易。相关境外机构投资者应当委托中国人民银行或具备国际结算业务能力的银行间市场结算代理人进行交易和结算。委托银行间市场结算代理人进行交易和结算的，应当签署结算代理协议并根据相关规定向中国人民银行上海总部备案。

对于《通知》未尽事宜，将参照适用《中国人民银行关于境外人民币清算行等三类机构运用人民币投资银行间债券市场试点有关事宜的通知》的相关规定。

（三）关注要点

《通知》为相关境外机构投资者运用人民币投资银行间市场简化了手续，拓宽了渠道。这体现了我国稳步推进资本市场对外开放、逐步实现资本项目可自由兑换的近期愿景。是拓宽人民币回流渠道、促进人民币国际化的一个重要举措。该通知的具体实施情况、人民币回流渠道的更新动态以及与之相配套的立法及实践值得我们关注。

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The laws on the recognition and enforcement of judgments and arbitral awards from Taiwan were made clearer and more complete through the promulgation of the *Provisions of the Supreme People's Court on the Recognition and Enforcement of the Civil Judgments Rendered by Courts in Taiwan Region* and the *Provisions of the Supreme People's Court on the Recognition and Enforcement of the Arbitral Awards Rendered in Taiwan Region*.

The Ministry of Transportation ("**MOT**") revised the *Interim Administrative Measures for the Examination and Approval of Wholly Foreign-Owned Shipping Services Companies* (the "**Interim Measures on Shipping Services Companies**") to further relax market access for shipping services.

The People's Bank of China ("**PBOC**") issued the *Circular of the PBOC on Matters relating to the Investment in the Inter-bank Market with RMB Funds by Foreign Central Banks, International Financial Organizations and Sovereign Wealth Funds* in order to further reduce the requirements for overseas investments in the inter-bank market.

1. The Supreme People's Court Promulgated New Provisions on the Recognition and Enforcement of Civil Judgments and Arbitral Awards Rendered in Taiwan Region

On June 29, 2015, the Supreme People's Court promulgated the *Provisions of the Supreme People's Court on the Recognition and Enforcement of the Civil Judgments Rendered by Courts in Taiwan Region* (the "**New Judgment Provisions**") and the *Provisions of the Supreme People's Court on the Recognition and Enforcement of the Arbitral Awards Rendered in Taiwan Region* (the "**New Arbitration Provisions**"). The provisions became effective on July 1, 2015, thereby making laws on recognizing and enforcing judgments and arbitral awards from Taiwan more clear and complete.

1.1 Background

The first piece of legal authority concerning the recognition and enforcement of judgments and arbitral awards from Taiwan emerged in 1998 when the *Provisions of the Supreme People's Court on Recognition by People's Courts of Relevant Civil Judgments of Courts in Taiwan Region* came into force. In the years that followed, the Supreme People's Court went on

to clarify issues in the same domain through three judicial interpretations, which are: (1) a reply of the Supreme People's Court in 1999 on the conditions under which an application to a people's court for the recognition of a mediated settlement in Taiwan shall be accepted, (2) a reply of the Supreme People's Court in 2001 on whether an application to a people's court for the recognition of a payment order from a court in Taiwan shall be accepted, and (3) the *Supplementary Provisions of the Supreme People's Court on Recognition of the Civil Judgments Rendered by Relevant Courts of Taiwan* in 2009.

The Supreme People's Court systematically reorganized the aforementioned four judicial interpretations (the "**Former Provisions**") into the New Judgment Provisions and created the separate New Arbitration Provisions to address the recognition of arbitral awards, regarding which the Former Provisions only provided that the rules for the recognition of judgments shall apply *mutatis mutandis*. The new provisions became effective on July 1, 2015, and the Former Provisions were repealed on the same day.

1.2 Legal Review

1.2.1 The New Judgment Provisions

The New Judgment Provisions did not bring about fundamental change to the system established by the Former Provisions. Rather, they restated the existing rules in a clearer structure and clarified certain issues not addressed by the Former Provisions. That being said, the New Judgment Provisions do have several features that deserve our attention, which are identified below.

(1) Expand the Range of Legal Instruments that can be Recognized

i. Mediation Statements Rendered by Local Mediation Committees and Approved by Courts

Civil disputes can be mediated by the mediation committees set up in the governments of the towns, cities, and districts of Taiwan. A resulting mediation statement can obtain the force of a final judgment, once approved by a court according to the law of the region. The Former Provisions did not permit the recognition of such mediation statement, whereas the New Judgment Provisions permit their recognition.

ii. Settlement Transcripts

According to the law in Taiwan, a settlement reached by litigants in court (evidenced by a settlement transcript) has the force of a final judgment. However, in the past, people's courts could only recognize mediation transcripts (the products of mediation conducted in the courts in Taiwan), but not settlement transcripts. The New Judgment Provisions permit the recognition of settlement transcripts.

iii. Judgments, Rulings and Reconciliation Transcripts on Civil Damages Rendered in Criminal Proceedings

The Former Provisions did not address legal instruments concerning civil matters that may

possibly be issued in a criminal proceeding in Taiwan. The New Judgment Provisions permit the recognition of judgments, rulings, and settlement transcripts on civil damages rendered in criminal proceedings in Taiwan.

With the expansion discussed above, all forms of legal instruments that have the effect of a final resolution of a civil dispute may now be recognized in the people's courts.

(2) More Forums to Choose from

Under the Former Provisions, an application for recognition can be made only to the intermediate People's Court located in the domicile or habitual residence of the applicant or the locus of the property that is the subject of enforcement proceedings. The New Judgment Provisions added to the jurisdictional options the intermediate People's Courts located in the domicile and the habitual residence of the respondent as well as the special People's Courts in all of the aforementioned locations.

(3) Property Preservation Measures

In the past, an application for preservation measures could not be made before submitting the application for recognition. The New Judgment Provisions permits an application for preservation measures pursuant to the Civil Procedure Law and relevant judicial interpretations either before or after the application for recognition.

(4) Recognition Application for Case Litigated at People's Court Shall Not be Accepted and Shall Not Cause a Suspension of the Litigation

In the past, if a party to a case being litigated at a people's court applied for recognition of a judgment in Taiwan rendered for the same case, the people's court was required to suspend the litigation until the conclusion of the recognition proceeding. The New Judgment Provisions give priority to litigation in the people's courts. An application for recognition that concerns a case being litigated in a people's court will no longer cause the litigation to be suspended; such application will not be accepted by the people's court.

(5) Time Limits for Application for Recognition and Enforcement Shall Follow the Rules for Enforcement under the Civil Procedure Law

The New Judgment Provisions provide that the provision in the Civil Procedure Law on the limitation period for enforcement shall apply to the limitation period for applications for recognition and enforcement, filed pursuant to the New Judgment Provisions. Although the time limit stipulated in the Former Provisions was generally the same as in the Civil Procedure Law, by referring directly to the Civil Procedure Law, applicants can now apply the general rules on the suspension and discontinuance of limitations to applications for recognition and enforcement under the New Judgment Provisions.

(6) Applications for Recognition of Judgments on Familial Relationships Have No Time Limit

The Former Provisions did not consider the different nature of cases when they stipulated

the limitation periods for applications. The New Judgment Provisions provide that the limitation does not apply to applications for recognition of judgments on familial relationships.

(7) Formalities for Power of Attorney Simplified

A power of attorney concerning an application for recognition or enforcement pursuant to the Former Provisions must be notarized in all circumstances. According to the New Judgment Provisions, a power of attorney granted by a person domiciled in the Mainland need not be notarized, and a power of attorney from a person domiciled elsewhere need not be notarized if it has been executed before a judge of a people's court.

(8) Special Requirement for Default Judgments

The New Judgment Provisions added a new requirement for the application for recognition of a default judgment in Taiwan. The applicant must, at the time of submitting the application, submit proof that the opposing party was properly served before the default judgment was rendered, unless that fact has been stated in the judgment itself.

(9) Expressly Permit Re-Application After an Application was Dismissed

Under the Former Provisions, it was not clear whether an applicant could make a second application for the recognition of a legal instrument after a people's court had dismissed a previous application for the recognition of the same legal instrument on the grounds that the authenticity and binding effect of the legal instrument could not be ascertained. The New Judgment Provisions expressly permits reapplication in that situation.

(10) Review of Decisions on the Applications

When a people's court refuses to accept an application for recognition or enforcement, the New Judgment Provisions allow the applicant to appeal such refusal. When an application is dismissed or when a people's court rules that the legal instrument at issue shall not be recognized, the New Judgment Provisions allow the applicant to apply to the people's court at the next higher level for reconsideration.

(11) Integration of the Cross-Strait Judicial Cooperation Mechanism

The New Judgment Provisions integrated the cross-strait judicial cooperation mechanism, which was introduced in 2009, into the procedures on the recognition and enforcement of judgments rendered in Taiwan. Such mechanisms are used in a range of procedures, from service of documents to investigation of the authenticity and binding effect of legal instruments to determining whether a party has been properly served.

1.2.2 The New Arbitration Provisions

While the New Arbitration Provisions share the same structure with the New Judgment Provisions, the following unique features of the New Arbitration Provisions stand out.

(1) Expressly Permit the Recognition of Settlement and Mediation in Arbitration Settings

During arbitration procedures in Taiwan, if a

settlement is reached, either through the parties' own initiatives or through mediation, a statement of settlement or a statement of mediation will be produced and there will be no arbitration award. In the past, it was not clear whether such a statement of settlement or a statement of mediation could be recognized in a people's court. The New Arbitration Provisions gave unequivocal and positive answers to both the statement of settlement and the statement of mediation.

(2) Inclusion of *Ad Hoc* Arbitration

In the past, the people's courts could only recognize results from institutional arbitration in Taiwan, but not awards from *ad hoc* arbitration in the region. The New Arbitration Provisions permit the recognition of ad hoc arbitration results.

(3) Recognition Conditions Tailored for Arbitration

The Former Provisions primarily focused on the recognition of judgments and expected the courts to apply the provisions concerning the recognition of judgments *mutatis mutandis* when they contemplated the recognition of arbitral awards. The New Arbitration Provisions, for the first time, stipulated the specific conditions under which the people's courts may recognize arbitration awards rendered in Taiwan.

(4) Provisions Concerning Arbitral Awards that are Challenged in Taiwan

The Former Provisions did not address the situation where the arbitration award under review by a people's court for recognition is concurrently sought to be set aside in Taiwan. In such situation, the New Arbitration Provisions require the people's court to suspend the proceedings for recognition or enforcement. If the award will be set aside in Taiwan, the people's court is required to rule that the award shall not be recognized or to terminate the enforcement proceeding. If the award will be upheld in Taiwan, the people's court shall resume the recognition or enforcement proceedings.

1.3 Next Step

The New Judgment Provisions and the New Arbitration Provisions mark a new phase in the laws on recognition and enforcement by the people's courts of instruments resolving civil disputes that are rendered in Taiwan, which laws have been enhanced and made more complete.

Both the New Judgment Provisions and the New Arbitration Provisions incorporated the general rules set forth in the Civil Procedure Law with respect to matters such as property preservation measures, limitation periods, and costs. The provisions, however, contain no specific guidance on how the general rules should be applied in the scenarios of recognizing or enforcing legal instruments from Taiwan. For instance, while the *Measures for the Payment of Litigation Fees* shall apply to application costs under the provisions, it is unclear whether the *Measures* concerning case acceptance fees or application fees should apply. In the past, the people's courts sometimes processed the applications free of

charge and sometimes charged case acceptance fees. Such questions should be answered by future judicial practice and interpretation.

Will the promulgation of new provisions have an impact on the choice of the method of dispute resolution and the choice of forum by people on the two sides of the Taiwan Strait? Will there be more instances of residents in Taiwan seeking enforcement against the property of debtors that are located in the Mainland? These future developments require our continued attention.

2. MOT Revised Interim Measures on Shipping Services Companies

On July 5, 2015, MOT released the revised *Interim Measures on Shipping Services Companies* to further relax market access to shipping services.

2.1 Background

On January 28, 2000, the Ministry of Foreign Trade and Economic Cooperation (latter be renamed to the Ministry of Commerce) and MOT jointly released *Interim Measures on Shipping Services Companies*. Such measures regulated market access requirements, application documents, procedures for establishment, business scope and minimum registered capital for wholly foreign-owned shipping services companies.

On August 15, 2011, to further promote the international shipping industry, MOT released the *Notice on Strengthening the Examination and Approval of Wholly Foreign-owned Shipping Services Companies*. Such notice relaxed market access for shipping services, broadened the scope of permissible business, and adjusted the procedures for establishment.

On July 5, 2015, MOT revised the *Interim Measures on Shipping Services Company* and removed “Interim” from its title.

2.2 Legal Review

The main revisions are set forth as follows.

First, the following requirements regarding registered capital are removed: (1) the minimum registered capital for a wholly foreign-owned shipping services company cannot be less than USD 1 million; (2) the registered capital must be fully paid-up before setting up a branch; and (3) prior to setting up each branch, the registered capital must be increased by at least USD 120,000.

Second, it absorbed the *Notice on Strengthening the Examination and Approval of Wholly Foreign-owned Shipping Services Companies* on market access and business scope, which resulted in the following changes.

(1) Foreign shipping companies are allowed to set up wholly foreign-owned shipping services companies directly. It is no longer necessary to set up representative offices prior to the establishment of such companies.

(2) Foreign shipping companies are allowed to set up wholly foreign-owned shipping services companies in the port cities where they have a consistent amount of cargo or

passengers.

(3) Wholly foreign-owned shipping services companies are allowed to set up branches one year after the commencement of business.

(4) Wholly foreign-owned shipping services companies are allowed to advertise to passengers and issue passenger tickets. That is to say, the international cruise lines are allowed to set up wholly foreign-owned shipping services companies to provide services such as advertising and issuing passenger tickets to foreign cruises.

Lastly, it absorbed the *Notice on Strengthening the Examination and Approval of Wholly Foreign-owned Shipping Services Companies* on approval authority. The provincial commerce authority is the competent approval authority. The procedures for establishment are adjusted to require that the company: (1) obtains the approval from the provincial commerce authority (after the provincial commerce authority receives MOT's consent); (2) satisfies the formalities for establishment registration; and (3) obtains an *Operation Permit for a Wholly Foreign-owned Shipping Service Company*.

2.3 Next Step

We will monitor whether the *Measures on Shipping Services Companies* will further promote the development of wholly foreign-owned shipping services companies.

3. PBOC issued *Circular of the PBOC on Matters relating to the Investment in the Inter-bank Market with RMB Funds by Foreign Central Banks, International Financial Organizations and Sovereign Wealth Funds*

On July 14, 2015, PBOC issued *Circular of the PBOC on Matters relating to the Investment in the Inter-bank Market with RMB Funds by Foreign Central Banks, International Financial Organizations and Sovereign Wealth Funds* ("**Circular**") to further reduce the requirements for overseas investments in the inter-bank market.

3.1 Background

On April 30, 2000, PBOC promulgated *Measures of the PBOC for the Administration of Bond Transactions in the National Inter-Bank Bond Market*, according to which only the following enterprises are allowed to enter the national inter-bank bond market: (1) commercial banks with legal person status inside the territory of China and their authorized branches, (2) non-bank financial institutions and non-financial institutions that have legal person status inside the territory of China, and (3) branches of foreign banks allowed to operate the RMB business with the approval of PBOC.

On August 16, 2015, PBOC issued *Circular of the PBOC on Issues Concerning Pilot Investment in Inter-bank Bond Market with RMB by Three Types of Institutions Including Overseas RMB Liquidation Banks*. Accordingly, the three types of overseas institutions (*i.e.,* overseas central banks or currency authorities, RMB liquidation banks in

Hong Kong and Macao, and overseas banks providing RMB settlement in cross-border trades), may upon approval by PBOC engage in bond investment in the inter-bank market, to the extent of the approved amount.

On March 13, 2013, PBOC released *Circular of the PBOC on Matters Relating to Qualified Foreign Institutional Investors ("**QFIIs**")' Investment in Inter-bank Bond Market*, under which, QFIIs with qualifications that have been granted by China Securities Regulatory Commission ("**CSRC**") and with investment quotas approved by State Administration of Foreign Exchange ("**SAFE**"), may apply to PBOC for access to the inter-bank bond market, and upon the consent of PBOC, may invest in the same in accordance with the approved investment quotas. According to *Administrative Measures for Domestic Securities Investments by QFIIs*, QFIIs means any overseas fund management institution, insurance company, securities firm or any other asset management institution that has been approved by CSRC to invest in China's securities market, and that has obtained an investment quota from SAFE.

In order to further improve the efficiency of investment in the inter-bank market by foreign central banks or monetary authorities, international financial organizations, and sovereign wealth funds ("**the relevant overseas institutional investors**"), on July 14, 2015, PBOC issued the Circular to further reduce the requirements for overseas investments in the inter-bank market.

3.2 Legal Review

The Circular simplified the approval system for relevant overseas institutional investors to enter the inter-bank market by requiring an investor to send by mail the original copy of the Chinese Inter-bank Market Investment Registration Form or submit the said form via an inter-bank market settlement agent on their behalf to PBOC (i.e., a filing system). Such institutions may engage in the relevant business once the filing is complete.

In addition, the relevant overseas institutional investors may determine the scale of their investments, without the limitation of an approved investment quota.

Further, the Circular specifically provides that the relevant overseas institutional investors shall act as long-term investors, and conduct transactions based on the reasonable needs of maintaining and increasing the value of assets. The relevant overseas institutional investors shall entrust PBOC or other inter-bank market settlement agents capable of processing international settlements, to carry out transactions and settlement on their behalf. Where the relevant overseas institutional investors entrust inter-bank market settlement agents to conduct transactions and settlement, they shall sign settlement agency agreements and submit the same to the PBOC Shanghai Head Office for filing, in accordance with the relevant provisions.

Matters not covered in the Circular shall be covered by the relevant provisions of the

Circular of the PBOC on Issues Concerning Pilot Investment in Inter-bank Bond Market with RMB by Three Types of Institutions Including Overseas.

3.3 Next Step

The Circular simplifies the formalities and broadens the channels for overseas international investment in the inter-bank market with RMB funds. It reflects the vision of opening up the capital market and achieving capital account convertibility in China. It is also an important measure to broaden backflow channels of RMB and accelerate the internationalization of RMB.

The implementation of the Circular, other new policies concerning the backflow channels of RMB and relevant supporting legislation and practice.

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