

The State Administration for Industry and Commerce issued the Decision of the State Administration for Industry and Commerce on Abolishing and Revising Certain Administrative Rules for Industry and Commerce, in which ten departmental rules were abolished and four departmental rules were revised.

The Shanghai Head Quarters of the People's Bank of China along with other organizations issued several regulations on the same date providing detailed rules for regulating investment activities of foreign investors in the interbank bond market.

The State Council and the Ministry of Commerce issued new rules to further promote trade liberalization between the Mainland and Hong Kong, as well as the Mainland and Macau.

1. The Decision of the State Administration for Industry and Commerce on Abolishing and Revising Certain Administrative Rules for Industry and Commerce

On April 29, 2016, the State Administration for Industry and Commerce (“**SAIC**”) issued the Decision of the State Administration for Industry and Commerce on Abolishing and Revising Certain Administrative Rules for Industry and Commerce (“**Decision on Abolishing and Revising Administrative Rules**”), in which ten departmental rules were abolished and four

departmental rules were revised, namely the Implementing Rules for the Administrative Regulations of the People's Republic of China on the Registration of Enterprise Legal Persons, Administrative Measures for the Registration of Enterprises of Foreign Countries (Regions) Engaging in Production and Operation Activities within the Territory of China, Administrative Measures for Authorized Registration of Foreign-invested Enterprises, and Measures for Equity Pledge Registrations with Administrative Authorities for Industry and Commerce are revised.

1.1 Background

The SAIC initiated a centralized clean-up campaign of departmental rules and issued the Decision on Abolishing and Revising Administrative Rules (Draft for Comment) on March 29, 2016. The Decision on Abolishing and Revising Administrative Rules was officially issued and implemented on April 29, 2016.

1.2 Legal Review

The relevant content for foreign investment of the Decision on Abolishing and Revising Administrative Rules are as follows:

Firstly, the registration rules have been annulled for representative offices of all foreign-invested enterprises. In fact, as of April 24, 2006, according to Implementation Opinions on Several

Issues of Administrative Rules on Examination, Approval and Registration of Foreign-invested Enterprises, the registration authorities no longer handle registrations for representative offices of foreign-invested enterprises. SAIC revised the Administrative Regulations of the People's Republic of China on the Registration of Enterprise Legal Persons based on the above implementation opinions.

Secondly, the registration authorities of foreign-invested enterprises engaging in production and operation business within the territory of China have been changed from SAIC and other authorized local administrations for industry and commerce to provincial level administrations for industry and commerce.

Thirdly, the requirements have been lifted for registration authorities to conduct annual inspections on branch offices of foreign banks, and foreign-invested enterprises engaging in operation and management and exploration and exploitation of mineral resources. The rules have been changed so that foreign-invested enterprises are required to submit an annual report for the previous year.

Lastly, the requirement has been lifted for foreign-invested enterprises to obtain approval from approving authorities before conducting equity pledge registrations. However, it is important to note that according to the Several Provisions on Change of Investors' Equity in Foreign-invested Enterprises, any pledge of equity by foreign-invested enterprises is still

required to obtain prior approval from the approving authorities before filing with registration authorities, and any pledge of equity without obtaining approval and registering would be invalid. Therefore, although registration authorities would no longer require prior approval from approving authorities when handling equity pledge registration, foreign-invested enterprises should still obtain approval from approving authorities prior to submitting equity pledge registration.

1.3 Next Steps

Foreign-invested enterprises engaging in production and operation activities within the territory of China should note that they are required to submit annual reports for the previous year through Enterprise Credit and Information Publicity System to its original registration authority between January 1 and June 30 each year. If foreign-invested enterprises fail to submit annual reports according to the relevant provisions, they will face the risk of being punished by competent authorities.

2. Issuance of Several Regulations Governing Investment Activities of Foreign Investors in the Interbank Bond Market

On May 27, 2016, the Shanghai Head Quarters of People's Bank of China (hereinafter "**Shanghai HQ**") issued the Implementing Rules of Record-filing Administration of Investments of Foreign Institutional Investors in the Interbank Bond Market (Zhong Guo Ren Min Yin Hang Shang Hai Zong Bu Gong Gao [2016] No. 2)

(hereinafter “**No. 2 Rules**”) which clarifies in detail record-filing administration of investments of foreign institutional investors in the interbank bond market. On the same date the State Administration of Foreign Exchange issued the Circular of the State Administration of Foreign Exchange on Foreign Exchange Questions Relating to Investments of Foreign Institutional Investors in the Interbank Bond Market (Hui Fa [2016] No. 12) (hereinafter “**No. 12 Circular**”). The China Central Depository & Clearing Co., Ltd. (hereinafter “**CCDC**”), the National Interbank Funding Center (hereinafter “**NIFC**”) and the Interbank Market Clearing Joint Stock Company (hereinafter “**Clearing House**”) jointly issued the Guide for Foreign Institutional Investors to Enter into the Interbank Market Network and Account Opening (hereinafter “**NAO Guide**”). No. 12 Circular and NAO Guide regulate the foreign exchange registration and remittance and exchange of capital, and account opening and networking.

2.1 Background

People’s Bank of China issued the Circular on Further Improving the Investments by Foreign Institutional Investors in the Interbank Bond Market (hereinafter “**Circular**”) on February 17, 2016. The Circular mainly clarifies the scope and requirements for qualified foreign institutional investors to invest in the interbank bond market, and system of trading and settlement by the clearing agents for the foreign investors.

Furthermore, the Circular also stipulates that the

duties of relevant organizations in investment activities of the foreign institutional investors in the interbank bond market, including: (1) remittance and exchange of capital by the foreign institutional investors according to administrative rules of foreign exchange; (2) the Shanghai HQ is responsible for record-filing of foreign institutional investors and strengthening the interim and post surveillance and administration of foreign institutional investors and clearing agents; and (3) provisions of satisfactory services and surveillance by the interbank lending and borrowing center and bond registration, management and clearance organization. The No. 2 Rules, the No. 12 Circular and the NAO Guide correspond with the above provisions in the Circular. To date, the investments of foreign institutional investors in the interbank bond market under the framework of the Circular have been further regulated on an operation level.

2.2 Legal Review

As the implementing rules of the Circular, No. 2 Rules formulates two investment record-filing forms for juristic-person and non-juristic-person investors according to the Circular and further clarifies and specifies relevant provisions in the Circular, which mainly includes the follows:

(1) The Circular stipulates that for foreign institutional investors to enter into the interbank bond market, they shall apply for record-filing procedure via clearing agents with the Shanghai HQ. The No. 2 Rules further clarifies that the Shanghai HQ when upon receiving such

record-filing application shall issue the notice of record-filing within 20 work days, and such notice of record-filing will be effective for three months from the date of issuance. At the same time, the No. 2 Rules stipulate that for foreign investors to alter the record-filing information or withdraw from the interbank bond market, they shall file application via clearing agents. If the foreign institutional investors fail to remit 50% or less of the intended investment amount in the record-filing within 9 months from the date of completion of record-filing, they shall resubmit relevant information regarding intended investment scale.

(2) The Circular stipulates that the Shanghai HQ is responsible for strengthening the interim and post surveillance and administration of the foreign institutional investors and clearing agents. Regarding this matter, the No. 2 Rules set out detailed measures for interim and post surveillance and administration, including: requiring the clearing agents to submit relevant information regarding the foreign institutional investors represented and report on operation of investment business of last month on a monthly basis; requiring the CCDC, the NIFC and the Clearing House to submit the report on operation of business operation of foreign institutional investors of last month on a monthly basis; the Shanghai HQ has the direction in conducting surveillance and administration of the foreign institutional investors and clearing agents by interviews and on-site inspections, and may adopt administration measures and

administration punishments for its breaching of relevant rules and regulations, including admonishing communication, warning, suspension of business, and forced withdrawal.

The No. 12 Circular passed by the State Administration of Foreign Exchange regulates the investment activities of the foreign institutional investors in the interbank bond market in mainly three aspects: the first aspect is to conduct registration administration of foreign institutional investors and to require the foreign institutional investors to undergo foreign exchange registration, alteration, and deregistration procedure via the clearing agents; the second aspect is not to set a limit for any single organization or a total limit, and the foreign institutional investors can apply for remittance of capital, and settlement and purchase of foreign exchange at the banks with relevant registration information without obtaining examination or approval from foreign exchange authorities; the third aspect is to require the foreign institutional investors to keep the ratio of foreign-domestic currency of the outgoing capital the same as that of the incoming capital, with the difference not exceeding 10%.

2.3 Next Steps

Although the Circular sets out that the qualified foreign institutional investors can decide the investment scale on their own without a limit on their investment and the Qualified Foreign Institutional Investors (QFII) and Renminbi Qualified Foreign Institutional Investors (RQFII)

have been accepted by the Circular as the qualified foreign institutional investors to invest in the interbank bond market. However, the No. 12 Circular passed by the State Administration of Foreign Exchange stipulates that the QFII and the RQFII investing in the interbank bond market shall still follow the foreign exchange rules currently applicable to them. Hence, the QFII and RQFII are still restricted in aspects including investment limit, ratio and remittance and exchange of currency.

3. To Further Promote Trade Liberalization between the Mainland and Hong Kong, as well as the Mainland and Macau

In order to implement the Agreement on Trade in Services under the framework of the Mainland and Hong Kong Closer Economic Partnership Arrangement and the Agreement on Trade in Services under the framework of the Mainland and Macau Closer Economic Partnership Arrangement signed by the Mainland and Hong Kong, as well as the Mainland and Macau in November 2015 respectively (collectively referred to as **“Agreements on Trade in Services”** hereunder), the State Council issued the Decision of the State Council on Temporarily Adjusting the Administrative Approvals and the Special Administrative Measures on Market Access concerning Hong Kong and Macau Service Providers in Mainland China, and the Ministry of Commerce issued the Administrative Measures for the Filing of Investments by Hong Kong and Macau Service Providers in Mainland China (for

Trial Implementation), both effective on June 1, 2016.

3.1 Background

In 2003, in order to strengthen trade and investment cooperation between the Mainland and Hong Kong, as well as the Mainland and Macau, the Mainland and Hong Kong Closer Economic Partnership Arrangement and the Mainland and Macau Closer Economic Partnership Arrangement were signed by the Mainland and Hong Kong, as well as the Mainland and Macau respectively (collectively referred to as **“CEPA”** hereunder). It is CEPA’s intention to promote development in product trade, service trade, and trade and investment facilitation between the Mainland and Hong Kong, as well as the Mainland and Macau.

To promote achievement of basic liberalization of trade in services between the Mainland and Hong Kong, as well as the Mainland and Macau, the Agreement between the Mainland and Hong Kong on Achieving Basic Liberalization of Trade in Services in Guangdong and the Agreement between the Mainland and Macau on Achieving Basic Liberalization of Trade in Services in Guangdong (collectively referred to as **“Guangdong Agreements”** hereunder) were signed between the Mainland and Hong Kong, as well as the Mainland and Macau in 2014. The Guangdong Agreements were effective on March 1, 2015. To implement Guangdong Agreements, the State Council drafted the Decision of the State Council on Temporarily Adjusting the

Administrative Approvals and the Special Administrative Measures on Market Access concerning Hong Kong and Macau Service Providers in Mainland China, which provides that, other than the restricted measures, establishment of and change in telecommunication enterprises, companies engaging in cultural areas and financial institutions, and establishment of and change in commercial presence that are not in the form of companies as specified in the Guangdong Agreements, for Hong Kong and Macau service providers investing in service trade areas in Guangdong opened to Hong Kong and Macau as specified in Guangdong Agreements, the approval requirements on joint venture agreements and articles of association in relation to the establishment of and change in companies as specified in regulations related to foreign investment are temporarily suspended, and filing requirements on joint venture agreements and articles of association in relation to the establishment of and change in companies are implemented. The Ministry of Commerce also drafted the Administrative Measures for the Filing of Investments by Hong Kong and Macau Service Providers in Mainland China (for Trial Implementation), setting out provisions on filing management for Hong Kong and Macau service providers investing in service trade areas in Guangdong opened to Hong Kong and Macau under the Guangdong Agreements.

On the basis of the Guangdong Agreements, the Mainland and Hong Kong, as well as the Mainland and Macau signed the Agreements on

Trade in Services in 2015 respectively, extending the geographical coverage to the whole Mainland for basic liberalization of trade in services. The Agreements on Trade in Services went into effective on June 1, 2016.

3.2 Legal Review

In order to implement the Agreements on Trade in Services, the State Council issued the Decision of the State Council on Temporarily Adjusting the Administrative Approvals and the Special Administrative Measures on Market Access concerning Hong Kong and Macau Service Providers in Mainland China, and the Ministry of Commerce issued the Administrative Measures for the Filing of Investments by Hong Kong and Macau Service Providers in Mainland China (for Trial Implementation), both effective on June 1, 2016. The Decision of the State Council on Temporarily Adjusting the Administrative Approval and Special Administrative Measures on Market Access for Hong Kong and Macau Service Providers in Guangdong Province and the Administrative Measures for the Record-filing of Investments Made by Hong Kong and Macau Service Providers in Guangdong Province (for Trial Implementation) have been abolished since June 1, 2016.

Other than the restricted measures, establishment of and change in telecommunication enterprises, companies engaging in cultural areas and financial institutions, and establishment of and change in commercial presence that are not in the form of

companies as specified in the Agreements on Trade in Services, for Hong Kong and Macau service providers investing in service trade areas in the Mainland opened to Hong Kong and Macau service providers as specified in the Agreements on Trade in Services, approval requirements on joint venture agreements and articles of association in relation to the establishment of and change in their companies have been changed to filing requirements.

Administrative approvals and special administrative measures such as qualification requirements, restrictions on equity proportion, and restrictions on business scope are temporarily adjusted for Hong Kong and Macau service providers in the Mainland. Specifically, (i) Hong Kong and Macau service providers are allowed to engage in telecommunication service, shipping transportation service, non-diploma professional training service, convention and exhibition service, and air transportation support service; (ii) Hong Kong and Macau service providers are allowed to invest and establish joint venture cultural and artistic performance group controlled by local government in Mainland; (iii) Chinese citizens with permanent residency in Hong Kong or Macau are allowed to establish individual business to operate individual performance brokers without obtaining approval on foreign investments in the Mainland; (iv) Hong Kong and Macau service providers are allowed to set up wholly-owned entertainment places in Guangdong Province; and (v) detailed administrative rules are to be drafted by relevant

departments and committees of the State Council and the People's Government of Guangdong Province.

The filing of joint venture agreements and articles of association in relation to establishment of and change in enterprises invested by Hong Kong and Macau investors are handled by competent commerce authorities of all provinces, autonomous regions, municipalities directly under the central government, cities under separate planning, Xinjiang Production and Construction Corps, and central cities at vice provincial level. Hong Kong and Macau service providers or enterprises invested by Hong Kong and Macau investors should file online through the Foreign Investments (for Hong Kong, Macau and Taiwan investors) Filing Information System developed by the Ministry of Commerce. If the enterprises established by Hong Kong and Macau investors are within the scope of filing, all investors should complete filing procedures after obtaining the Notice of Pre-approval of the Name of Enterprise. Any changes in basic information of enterprise invested by Hong Kong and Macau investors, change in basic information of investors, change in or transfer of equity, pledge of equity, merges, spin-offs and terminations of enterprises should be filed with the competent authorities. If changes occurred before June 1, 2016, enterprises invested by Hong Kong and Macau service providers should complete filing procedures, and any Certificate of Approval for Establishment of Enterprises with Investment of Taiwan, Hong Kong, Macau and Overseas Chinese in the

People's Republic of China should be returned and destroyed.

3.3 Next Steps

The State Council requires that detailed administrative rules concerning temporary adjustments on implementation of the

administrative approvals and the special administrative measures be drafted by relevant departments and committees of the State Council. The legislation progress and detailed content of relevant departmental rules is worth our continued attention.

Catherine Miao	Partner	Tel: 8620 2805 9066	Email: miaoqh@junhe.com
Vivian Pan	Associate	Tel: 8620 2805 9092	Email: panyym@junhe.com
Li Yuming	Associate	Tel: 8620 2805 9078	Email: liyuming@junhe.com
Sean Mei	Associate	Tel: 8620 2805 9033	Email: meixh@junhe.com

This document is provided for and only for the purposes of information sharing. Nothing contained in this document constitutes any legal advice or opinion of Jun He Law Offices. For more information, please visit our official website at www.junhe.com or our WeChat public account “君合法律评论”/WeChat account “JUNHE_LegalUpdate.”



国家工商行政管理总局发布《国家工商行政管理总局关于废止和修改部分工商行政管理规章的决定》，决定废止十部部门规章，并修改四部部门规章。

中国人民银行上海总部等机构于同日分别出台多个规定，为规范境外投资者投资银行间债券市场活动提供具体可操作依据。

国务院、商务部发布新规进一步推动内地与香港、内地与澳门的服务贸易自由化。

一、《国家工商行政管理总局关于废止和修改部分工商行政管理规章的决定》

2016年4月29日，国家工商行政管理总局（以下简称“工商总局”）发布《国家工商行政管理总局关于废止和修改部分工商行政管理规章的决定》（以下简称“《关于废止和修改规章的决定》”），决定废止十部部门规章，并对《中华人民共和国企业法人登记管理条例施行细则》、《外国（地区）企业在中国境内从事生产经营活动登记管理办法》、《外商投资企业授权登记管理办法》、《工商行政管理机关股权出质登记办法》四部部门规章进行修改。

（一）背景

工商总局开展了部门规章集中清理工作，并于2016年3月29日公布了《关于废止和修改规章的决定》的征求意见稿。《关于废止和修改规章的决定》于2016年4月29日正式公布实施。

（二）法律点评

《关于废止和修改规章的决定》与外商投资有关的主要修改内容如下：

首先，取消了所有外商投资企业的办事机构的登记规定。根据《关于外商投资的公司审批登记管理法律适用若干问题的执行意见》，实际上从2006年4月24日起，登记主管机关已不再办理外商投资公司的办事机构的登记。工商总局根据上述执行意见对《中华人民共和国企业法人登记管理条例施行细则》进行了修改。

其次，将在中国境内从事生产经营活动的外国企业的登记主管机关由工商总局或其授权的地方工商行政管理局变更下放至省级工商行政管理部门。

再次，取消外国银行分行、从事经营管理以及从事矿产资源勘探开发的外国企业向原登记主管机关办理年度检验的要求，改为外国企业应于每年报送上一年度的年度报告。

最后，取消以外商投资公司的股权办理出质登记应提交审批机关批准的要求。但需要注意的是，根据《外商投资企业投资者股权变更的若干规定》，以外商投资企业的股权出质，应当取得审批机关批准后向原登记机关办理备案，未经审批和备案的质押行为无效。因此，尽管登记主管机关办理股权出质登记时不再要求提交审批机关的批准，外商投资企业在办理股权出质登记前仍应取得审批机关

的批准。

（三）关注要点

在中国境内从事生产经营活动的外国企业需注意，每年1月1日至6月30日应通过企业信用信息公示系统向原登记主管机关报送上一年度的年度报告。如未按规定报送年度报告的，将面临被登记主管机关处罚的风险。

二、境外投资者投资银行间债券市场的多个规定出台

2016年5月27日，中国人民银行上海总部(以下简称“**央行上海总部**”)发布《境外机构投资者投资银行间债券市场备案管理实施细则》(中国人民银行上海总部公告[2016]第2号)(以下简称“**2号文**”)具体明确境外机构投资者投资银行间债券市场备案管理事宜。同日，国家外汇管理局发布《国家外汇管理局关于境外机构投资者投资银行间债券市场有关外汇管理问题的通知》(汇发[2016]12号)(以下简称“**12号文**”)，中央国债登记结算有限责任公司(以下简称“**中央结算公司**”)、全国银行间同业拆借中心(以下简称“**同业拆借中心**”)和银行间市场清算所股份有限公司(以下简称“**清算所**”)共同发布《境外机构投资者进入银行间市场联网和开户操作指引》(以下简称“**《联网和开户指引》**”)，就境外机构投资者在投资银行间债券市场活动中涉及的外汇登记和资金汇兑，以及开户、联网等进行规定。

（一）背景

中国人民银行于2016年2月17日发布《进一步做好境外机构投资者投资银行间债券市场有关

事宜公告》(以下简称“**《公告》**”)。《公告》主要明确了合格投资银行间债券市场的境外机构投资者的主体范围和条件，以及结算代理人受托为境外投资者进行交易和结算的制度。

除此之外，《公告》还规定了境外机构投资者投资银行间债券市场活动中相关机构的职责，包括：(1)境外机构投资者按照外汇管理规定办理相关资金的汇兑；(2)央行上海总部做好境外机构投资者的备案工作，加强对境外机构投资者和结算代理人的事中事后监督管理；以及(3)同业拆借中心及债券登记托管结算机构做好投资服务和监测工作。而2号文、12号文和《联网和开户指引》的落地分别对上述《公告》中的规定予以回应。至此，境外机构投资者在《公告》框架下投资银行间债券市场在实际操作层面有了明确的规范。

（二）法律点评

作为《公告》的实施细则，2号文根据《公告》规定制订了适用于法人类和非法人类投资主体的两种投资备案表，并对《公告》进行了细化、扩展和补充，主要包括：

(1)《公告》仅规定境外机构投资者进入银行间债券市场须由结算代理人向央行上海总部备案，2号文则明确了央行上海总部自受理备案申请之日起至出具备案通知书的时限为20个工作日，备案通知书的有效时间为自签发之日起三个月内。同时，2号文规定境外机构投资者变更备案信息或退出银行间债券市场的，均需委托结算代理人提交申请。如境外机构投资者自投资备案完成之日起9个月内汇入的投资本金不足其备案拟投资规模50%的，需重新报送拟投资规模等信息。

(2) 《公告》指出由央行上海总部加强对境外机构投资者和结算代理人的事中事后监督管理，就此，2号文规定了具体的事中事后监督管理措施。该等措施包括：要求结算代理人逐月报送上月代理境外机构投资者的有关信息及投资业务开展情况报告；同业拆借中心、中央结算公司和清算所逐月报送上月境外机构投资者的业务开展情况报告；央行上海总部有权通过约谈、现场检查等方式对境外机构投资者和结算代理人相关业务开展情况进行监督管理，并可针对其等的违法违规行为采取包括诫勉谈话、警示通告、暂停业务、强制退出等监管措施和行政处罚。

国家外汇管理局通过12号文主要从三个方面对境外机构投资者在投资银行间债券市场活动进行管理：一是对境外机构投资者实行登记管理，要求境外机构投资者通过结算代理人办理外汇登记、变更和注销手续；二是不设单家机构限额或总限额，境外机构投资者可凭相关登记信息，到银行直接办理资金汇出入和结汇或购汇手续，无需经外汇局核准或审批；三是要求境外机构投资者汇出资金中的本外币比例应保持与汇入时情况基本一致，上下波动不超过10%。

(三) 关注要点

虽然《公告》确立了符合条件的境外机构投资者可自主决定投资规模，没有投资额度限制，并且合格境外机构投资者(QFII)、人民币合格境外机构投资者(RQFII)也被《公告》纳入投资银行间债券市场的适格境外投资者的范围，但是，国家外汇管理局在12号文中明确指出，QFII、RQFII投资银行间债券市场仍按照现行外汇管理规定执行，因

此，QFII、RQFII在投资额度、比例、汇兑等方面仍受一定限制。

三、 进一步推动内地与香港、内地与澳门的服务贸易自由化

为了实施内地与香港、澳门于2015年11月分别签署的《〈内地与香港关于建立更紧密经贸关系的安排〉服务贸易协议》和《〈内地与澳门关于建立更紧密经贸关系的安排〉服务贸易协议》(以下统称“《服务贸易协议》”)，国务院发布《国务院关于在内地对香港、澳门服务提供者暂时调整有关行政审批和准入特别管理措施的决定》、商务部发布《港澳服务提供者在内地投资备案管理办法(试行)》，并将于2016年6月1日起施行。

(一) 背景

2003年，为了加强内地与香港、内地与澳门之间的贸易和投资合作，内地与香港、澳门分别签署《内地与香港关于建立更紧密经贸关系的安排》、《内地与澳门关于建立更紧密经贸关系的安排》(以下统称“CEPA”)。CEPA旨在促进内地与香港、内地与澳门之间货物贸易、服务贸易、贸易投资便利化的发展。

为了推动内地与香港、内地与澳门基本实现服务贸易自由化，在CEPA框架下，2014年内地与香港、澳门决定就内地在广东省分别与香港、澳门基本实现服务贸易自由化签署《〈内地与香港关于建立更紧密经贸关系的安排〉关于内地在广东与香港基本实现服务贸易自由化的协议》、《〈内地与澳门关于建立更紧密经贸关系的安排〉关于内地在广东与澳门基本实现服务贸易自由化的协议》(以下统称“《广东协议》”)。广东协议于2015年3月1日

起施行。为了实施《广东协议》，国务院制定了《国务院关于在广东省对香港、澳门服务提供者暂时调整有关行政审批和准入特别管理措施的决定》，除了《广东协议》中保留的限制性措施及电信企业、文化领域公司、金融机构的设立和变更，以及公司以外其他形式的商业存在的设立和变更之外，香港、澳门服务提供者在广东省投资《广东协议》对香港、澳门开放的服务贸易领域，对公司设立及变更的合同、章程实施备案管理，暂时停止参照执行有关外商投资企业设立及变更的合同、章程审批规定。商务部亦制定了《港澳服务提供者在广东省投资备案管理办法（试行）》，对港澳服务提供者在广东省投资《广东协议》对香港、澳门开放的服务贸易领域备案管理工作作出规定。

在《广东协议》的基础上，2015 年内地与香港、内地与澳门就基本实现贸易自由化分别签署《服务贸易协议》，将大部分在广东省先行先试的服务贸易开放措施推广至内地全境范围。《服务贸易协议》于 2016 年 6 月 1 日起施行。

（二）法律点评

为了实施《服务贸易协议》，国务院发布《国务院关于在内地对香港、澳门服务提供者暂时调整有关行政审批和准入特别管理措施的决定》、商务部发布《港澳服务提供者在内地投资备案管理办法（试行）》，亦于 2016 年 6 月 1 日起施行。《国务院关于在广东省对香港、澳门服务提供者暂时调整有关行政审批和准入特别管理措施的决定》、《港澳服务提供者在广东省投资备案管理办法（试行）》则于 2016 年 6 月 1 日起被废止。

除了《服务贸易协议》中保留的限制性措施及

电信、文化领域公司、金融机构的设立和变更，以及公司以外其他形式的商业存在的设立和变更除外，对香港、澳门服务提供者在内地投资《服务贸易协议》开放的服务贸易领域，其公司设立及变更的合同、章程审批改为备案管理。

在内地对香港、澳门服务提供者暂时调整实施相关行政审批以及资质要求、股比限制、经营范围限制等准入特别管理措施，具体表现在：允许香港、澳门服务提供者在内地从事《服务贸易协议》规定的电信服务业务、海运运输服务、非学历职业技能培训业务、会议和展览服务、空运支持服务；允许香港、澳门服务提供者在内地投资设立地方控股的合资文艺表演团体；允许香港、澳门永久性居民中的中国公民无需经过外资审批可以在内地设立个体工商户，从事个体演出经纪人业务；允许香港、澳门服务提供者在广东省独资设立娱乐场所；具体管理办法由国务院相关部委、广东省人民政府制定。

港澳投资企业设立及变更的合同、章程的备案由各省、自治区、直辖市及计划单列市、新疆生产建设兵团、副省级中心城市等商务主管部门负责。港澳服务提供者或港澳投资企业通过商务部外商（港澳台侨）投资备案信息系统在线办理备案。设立属于备案范围内的港澳投资企业，全体投资者应在取得企业名称预核准通知书后办理备案手续。港澳投资企业发生基本信息变更、投资者基本信息变更、股权变更或转让、股权质押、合并、分立、终止等变更事项时，应当办理变更备案手续。2016 年 6 月 1 日前港澳服务提供者设立的企业发生变更的，应当办理变更备案手续，如有《港澳台侨投资企业批准证书》的还应缴销。

（三）关注要点

国务院要求相关部委就在内地对香港、澳门服务提供者暂时调整实施相关行政审批和准入特别

管理措施制定具体管理办法，相关部门规章的立法进程及具体内容值得关注。

缪晴辉 合伙人 电话：86 20 2805 9066 邮箱地址：miaoqh@junhe.com
潘一鸣 律师 电话：86 20 2805 9092 邮箱地址：panym@junhe.com
李宇明 律师 电话：86 20 2805 9078 邮箱地址：liyuming@junhe.com
梅兴弘 律师 电话：86 20 2805 9033 邮箱地址：meixh@junhe.com

本文仅为分享信息之目的提供。本文的任何内容均不构成君合律师事务所的任何法律意见或建议。如您想获得更多讯息，敬请关注君合官方网站“www.junhe.com”或君合微信公众号“君合法律评论”/微信号“JUNHE_LegalUpdates”。

