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## 1. China Revised Rules to Ease Foreign Strategic Investment in Listed Firms

### Background

On November 1, 2024, six government departments, including the Ministry of Commerce (“MOFCOM”) and the China Securities Regulatory Commission jointly issued the newly revised *Measures for the Administration of Strategic Investment in Listed Companies by Foreign Investors* (the “New Measures”), which **has taken effect on December 2, 2024**.

### Highlights

The New Measures reduced the threshold for strategic investment and broadened investment channels to encourage foreign investors to make long-term and value investments in China. The following are highlights in the New Measures:

- **Allowed foreign individuals to make strategic investments in listed companies**

Prior to this revision, only foreign legal persons or institutions were allowed to make strategic investments. Foreign individuals are now permitted to invest strategically in A-share listed companies. The New Measures also clarify that investors from Hong Kong, Macao, Taiwan, and investors who are Chinese citizens residing abroad and who make strategic investments in A-share listed companies are also subject to the New Measures.

- **Relaxed the requirements on foreign investors' overseas assets**

Under the previous regulations, potential foreign strategic investors had to either possess a minimum \$100 million worth of overseas actual assets or manage at least \$500 million actual assets in overseas markets. However, the threshold has since been lowered to “the total amount of actual assets shall not be less than \$50 million and the total amount of actual assets under management shall not be less than \$300 million, respectively, as long as the foreign investor does not serve as a controlling shareholder in the invested Chinese company. If foreign investors become controlling shareholders of listed companies, they must have total amount of actual assets of no less than 100 million US dollars or total amount of actual assets under management of no less than 500 million US dollars.

- **Added tender offers as an extra option to make strategic investments**

Previously, investors had only two options: share transfer agreements and private placements. Under the revision, tender offers for strategic investments are accepted. Meanwhile, foreign strategic investors are allowed to use shares of listed or non-listed overseas companies as consideration shares for acquisition payment if they invest via private placements or tender offers.

- **Reduced the shareholding thresholds**

Foreign investors' shareholding ratio is lowered from 10% to 5% for strategic investments carried out by transfer by agreement or tender offer. The shareholding ratio criterion is removed for private placements of shares.

- **Shortened lock-up period**

In order to encourage medium and long-term investment, the shareholding lock-up period for foreign investors has been reduced from no less than three years to no less than 12 months.

- **Removed MOFCOM's approval requirement**

Foreign investors no longer need to obtain MOFCOM's approval or record-filing to conduct Strategic Investments. The New Measure now only require foreign investors or listed companies to report investments to MOFCOM under three circumstances: (1) after the investment is completed; (2) when the shareholding of the foreign investor changes by more than 5%; or (3) when the controlling or relative controlling status of the foreign party changes after

the investment is completed. It is worth noting that foreign investors and listed companies shall fulfill their information reporting obligations in accordance with the provisions of the *Foreign Investment Law* and the *Measures for the Reporting of Foreign Investment Information*.

- **Enhanced regulatory framework**

The New Measures adopt a negative list management model for foreign strategic investments in A-share listed companies. Specifically, Foreign Investors are not allowed to make strategic investments in “prohibited sectors” listed on the negative list. To invest in “restricted sectors” listed on the negative list, Foreign Investors must comply with the negative list’s restrictions, including requirements for shareholding, senior management, or other conditions.

## **Conclusion**

The New Measures signal the PRC’s determination to further open up its capital markets to foreign investment and promote a more robust and globalized capital market. Foreign investors can take this opportunity to expand their footprint in the PRC in good companies with high liquidity and reasonable valuations.

## **2. Arbitration Law to be Revised to Enhance Credibility and International Competitiveness of Arbitration in China**

### **Background**

The [draft amendment to Arbitration Law](#) (the “Draft Amendment”) was submitted to the 12th Session of the Standing Committee of the 14th National People’s Congress for initial deliberation on November 4, 2024. The 2024 Draft Amendment includes the scope of foreign-related arbitration cases, additions in respect of agreed place of arbitration, online arbitral proceedings, deemed admission to jurisdiction in certain circumstances and required disclosure by arbitrators of issues that may affect their independence and impartiality.

**This is the first major revision of the Arbitration Law since its promulgation in 1995.** China’s Arbitration Law was first adopted on August 31, 1994, and formally came into effect on September 1, 1995. And it underwent non-substantive amendments in 2009 and 2017. In July 2021, the Ministry of Justice previously published an earlier draft of the revision for public review and input.

### **Highlights**

The Draft Amendment aims to improve the legal framework of arbitration in terms of broadening the scope of foreign-related arbitration cases, adding Ad Hoc arbitration system etc. The following are highlights in the draft amendment:

- **Broadening the scope of foreign-related arbitration cases**

Under the current law, only foreign-related economic, trade, transport and maritime disputes can be arbitrated, but the Draft Revision states that all cases involving foreign factors are allowed to be settled through arbitration. This means that more foreign-related cases can be applied to arbitration procedures.

- **Introducing “ad hoc arbitration” system**

The Draft Amendment introduces the mechanism of “ad hoc arbitration” in foreign maritime disputes and foreign disputes of enterprises in China’s Free Trade Zones (FTZs), providing a flexible way of organizing the tribunal on an *ad hoc* basis. The parties can choose *ad hoc* arbitration in relation to two categories of foreign-related disputes: (1) disputes arising from foreign-related maritime affairs; and (2) disputes involving foreign elements between enterprises registered in FTZs. *Ad hoc* arbitration affords parties greater flexibility in selecting arbitrators, determining arbitration rules, and setting procedures and deadlines.

- **Introducing the “place of arbitration” system**

The Draft Amendment explicitly grants the parties the right to determine the place of arbitration if parties reached a written agreement for arbitration, aligning the law with international arbitration practice.

- **Enabling Online Arbitration Proceedings**

The Draft Amendment expressly confirms the validity of arbitration proceedings conducted online. Conducting arbitration online can significantly reduce costs associated with travel, accommodation, and venue hire. It also allows for more flexible scheduling, potentially speeding up the resolution process.

- **Shortening Time limit for application for setting aside arbitration award**

The Draft Amendment shortens the time limit for applications to set aside arbitration awards from 6 months to 3 months from the date of receipt of the award. This requires parties to act quickly to any challenges to the arbitral award and will likely lead to the quicker resolution of the enforcement process.

### **Conclusion**

The release of the Draft Revision marks a crucial step in the internationalization of China's arbitration system. Fully absorbing the mature international experience, the revision is oriented to respond to modern commercial dispute resolution needs and has made various innovations centering on the flexibility, impartiality, and efficiency of arbitration system, for instance the introduction of Ad hoc arbitration system provides the parties with greater autonomy when arbitrating in China, granting them a greater range of options beyond institutional arbitration.

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