



PILLAR LEGAL

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1. Proposed Foreign Investment Law

On January 19, 2015, China's Ministry of Commerce ("MOFCOM") published for public comment a draft of the proposed Foreign Investment Law (the "Draft FIL"). In addition, MOFCOM released an explanatory note on the Draft FIL (关于《中华人民共和国外国投资法（草案征求意见稿）》等问题的说明) (the "Note").

The Draft FIL contains 11 chapters and 170 articles, while the Note summarizes the main content of the Draft FIL, including (1) the new definition for "foreign investors" and "foreign investments"; (2) market access administration; (3) national security censorship; (4) foreign-invested company reporting regime; (5) foreign investment promotion regime; (6) foreign investment protection regime; (7) coordinating complaints; (8) legal liabilities, and (9) various miscellaneous provisions.²

When this Draft FIL is implemented, it will replace the existing foreign investment laws, including the Sino-Foreign Equity Joint Venture Enterprise Law (中外合资经营企业法), the Sino-Foreign Cooperative Joint Venture Law (中外合作经营企业法), the Wholly Foreign Invested Enterprise Law (外资企业法) and the various implementation rules and ancillary regulations associated with these laws (the "Existing FIE Laws"). In addition, the organization forms and the business operation of foreign-invested companies will become subject to the Company Law of the People's Republic of China (中华人民共和国公司法) as amended in 2013 (the "Company Law"). As a result, wholly foreign-owned enterprises and foreign-invested joint ventures will no longer be subject to a separate legal regime as they currently are under the Existing FIE Laws.

A. Material Changes to the Definition of Foreign Investors.

Even though current laws and regulations do not provide clear definitions for foreign investments or foreign investors, generally a company in China is classified as foreign or domestic based upon the citizenship or organizational jurisdiction of the company's registered equity interest holders. The Draft FIL retains this traditional approach, but also introduces a new classification method based on "actual control".

According to the definition of "Chinese Investors" set forth in the Draft FIL, citizens of the People's Republic of China (the "PRC") and domestic companies under their control will be deemed to be Chinese Investors.³ The definition of "Foreign Investors" set forth in the Draft FIL includes (i) natural persons without Chinese

² See the Note.

³ See Section 12 of the Draft FIL.

nationality; (2) entities incorporated under the laws of other countries or regions; (3) governments of other countries or regions and their departments or agencies; and (4) international organizations.⁴

The Draft FIL indicates that the domestic companies under the control of foreign natural persons or entities will be treated as the Foreign Investors.⁵ In addition, the Draft FIL states that if a Foreign Investor consisting of an entity incorporated outside of the PRC is controlled by Chinese Investors, after receiving the approval of MOFCOM, such Foreign Investor could be deemed to be a Chinese Investor.⁶

The Draft FIL defines “control” to include any of the following: (1) holding equity ownership over 50%; (2) having a right to appoint a majority of board members, to ensure its nominee can occupy a majority of the board seats, or to exert a significant impact on the resolutions of shareholders’ meetings or board meetings; or (3) having significant influence over the company management, finances or personnel through contract or trust.⁷

These new definitions that implement the “actual control” approach to foreign investment classification suggest that MOFCOM is trying to prevent Foreign Investors from evading China’s foreign investment restrictions through the use of a variable interest entity (“VIE”) structure or other means. A detailed discussion of the impact on the VIE structures is set forth below.

B. Negative List

Pursuant to Section 6 of the Draft FIL, Foreign Investors are entitled to national treatment when making investment within China, unless such investments are in industries listed in the forthcoming catalogue of special administrative measures for foreign investment (外国投资特别管理措施目录) (the “**Negative List**”). Unlike the current Industry Catalogue for the Guidance of Foreign Investments (外商投资指导目录), the Negative List will only consist of two categories: prohibited industries and restricted industries. If the foreign investment is in an industry other than those listed as restricted or prohibited industries on the Negative List, such foreign investment will not require pre-approval by MOFCOM and will only require submission of an information report to MOFCOM.

Chapter 5 of the Draft FIL establishes a new information report regime for foreign-invested companies. Under the new regime, foreign-invested companies will

⁴ See Section 11 of the Draft FIL.

⁵ See Section 11 of the Draft FIL.

⁶ See Section 45 of the Draft FIL.

⁷ See Section 18 of the Draft FIL.

be required to submit an information report to MOFCOM:

- (1) Before or within thirty (30) days after completion of the foreign investment;
- (2) Within thirty (30) days after completion of any changes to such foreign investment, e.g. share transfer, share pledge, capital increase, etc.; and
- (3) On an annual and quarterly basis if the foreign-invested company's total assets, sales or revenues are over RMB10 billion or if the foreign-invested company has more than ten (10) subsidiaries in China.

In addition, it is worth noting that pursuant to the Reform Proposals for the Register Capital Registration System (注册资本登记制度改革方案) issued by the State Council (国务院) on February 7, 2014, all companies in China (including foreign-invested companies) will no longer be required to complete the annual inspection process with the State Administration for Industry and Commerce (国家工商总局) (the “SAIC”), but shall instead only be required to submit an annual information report to SAIC through the regulator's website. It is not yet clear how the MOFCOM foreign-invested company reporting system will interact with the SAIC reporting system that will apply to all companies. It appears, however, that foreign-invested companies will be required to comply with both the MOFCOM and the SAIC reporting requirements.

Section 23 of the Draft FIL indicates that the State Council will publish the Negative List in the future. As a result, it is not yet clear which industries will continue to be subject to foreign ownership restrictions. It is worth noting, however, that on November 4, 2014, the National Development and Reform Commission of the PRC (国家发展与改革委员会) published for public comment an updated Industry Catalogue for the Guidance of Foreign Investments (the “Draft Industry Catalogue”). It is not yet clear how the Draft Industry Catalogue will interact with the Negative List, or whether the Negative List would replace the Draft Industry Catalogue.

C. Material Changes to the Operation of WFOE.

Pursuant to Section 217 of the Company Law, the Company Law applies to all foreign-invested limited liability companies and joint stock companies, however, if any provision conflicts with the Existing FIE Laws, then the Existing FIE Laws will prevail. Since there are contradictions between the Company Law and the Existing FIE Laws, foreign investors are often confused when attempting to reconcile these conflicting legal requirements. However, as mentioned above, when this Draft FIL is implemented, the Existing FIE Laws will be replaced, and the Company Law will unconditionally apply to all foreign-invested companies.

For example, the table below shows the key changes to the operation of WFOE

that will be implemented where the FIL becomes effective.

Item	Current Rule	After Draft FIL Effective
Pre-Approval for the Establishment of a WFOE	Pre-approvals from MOFCOM and other government authorities are required. ⁸	No pre-approval required unless the WFOE's business falls under the Negative List. ⁹
Articles of Association	The following content shall be included in the articles of association: (1) company name and address; (2) purpose of the company and the business scope; (3) total investment amount, registered capital and date of the investment; (4) form of organization; (5) company institutions and their functions and procedural rules, legal representative, general manager and other key manager; (6) financial, accounting and audit principal and system; (7) labor management; (8) business period, termination and company liquidation; and (9) the procedure to modify the articles. ¹⁰	The following content shall be included in the articles of association: (1) company name and address; (2) the business scope; (3) registered capital; (4) shareholders; (5) forms, amount and date of the registered capital; (6) company institutions and their functions and procedural rules; (7) legal representative; (8) other matters deemed necessary by the board or shareholders. ¹¹

⁸ See Chapter II of the Implementation Regulations on Wholly Foreign Invested Enterprise Law (外资企业法实施条例) (the "Implementation Regulations").

⁹ See Section 26 of the Draft FIL.

¹⁰ See Section 15 of the Implementation Regulations.

¹¹ See Section 25 of the Company Law.

Increase or Decrease of Register Capital	Pre-approval from MOFCOM required, and such increase or decrease shall be registered with SAIC. ¹²	No pre-approval required, but such increase or decrease still needs to be registered with SAIC. ¹³
Equity Transfer	Pre-approval from MOFCOM required, and such equity transfer shall be registered with SAIC. ¹⁴	No pre-approval required, but such equity transfer still needs to be registered with SAIC. ¹⁵
Information Report	Annual information report to SAIC is required. ¹⁶	Annual information report to SAIC and information reports to MOFCOM required. ¹⁷
Legal Representative	Determined by the articles of association of the company. ¹⁸	As determined by the company's articles of association, the legal representative may be the chairman of the board, the executive director, or the general manager of the company. ¹⁹

Overall, if the Draft FIL is passed, it will be easier for foreign investors to do business and operate companies in China. However, it is also worth noting that if the Draft FIL is passed, WFOEs might be required to update their articles of association and adjust their legal representative to comply with the Company Law.

D. Potential Impact on the VIE Structure

Under China's current laws and regulations, foreign investment is prohibited or restricted in a variety of industries, including banking, natural resources,

¹² See Section 21 and 22 of the Implementation Regulations.

¹³ See Section 179 of the Company Law.

¹⁴ See Section 23 of the Implementation Regulations.

¹⁵ See Section 32 of the Company Law.

¹⁶ See the Reform Proposals for the Register Capital Registration System (注册资本登记制度改革方案).

¹⁷ See analysis in Section B of this article for reference.

¹⁸ See Section 24 of the Implementation Regulations.

¹⁹ See Section 13 of the Company Law.

telecommunications and the internet. Notwithstanding these foreign investment restrictions, many foreign-invested companies have achieved what they believe to be technical compliance with the foreign ownership restrictions by establishing a VIE structure in which the foreign-invested entity does not have a direct ownership interest in the domestic operating company that holds the licenses required to operate the restricted industries in China. However, Section 149 of the Draft FIL imposes heavy penalties for using contractual control mechanisms to evade the foreign investment restrictions, including fines, confiscation of illegal gains and imprisonment of up to one year for the person-in-charge.

As discussed above, once the “actual control” principle is adopted, a company under the actual control of Foreign Investors will be treated as a foreign-invested company, and a company whose equity interest holder is a foreign entity under the actual control of Chinese Investors will be treated as a domestic company. As a result, the Draft FIL will not affect the validity of existing VIE structures where PRC citizens control the foreign-invested company in the VIE structure. However, if a company is controlled by non-PRC citizens or non-PRC entities, then such company will not be allowed to operate a business in a restricted or prohibited industry by establishing a VIE structure.

Although this appears to be a material change in China’s foreign investment rules, we view the Draft FIL as implementing a well understood policy, which is that the VIE structure is a viable means for Chinese nationals to raise foreign capital, but the VIE structure is not an avenue for foreign companies to enter China’s market in industries where foreign investment is restricted or prohibited. As discussed in greater detail below, one important question raised by the Draft FIL’s implementation of this longstanding policy is how to treat companies that were once controlled by Chinese nationals, but due to dilution over time are now controlled by Foreign Investors.

The Draft FIL is clear that existing VIE structures will not be permitted if the foreign-invested company in the VIE structure is under the actual control of Foreign Investors. The Draft FIL is not clear, however, on what procedure will be used to determine whether the foreign-invested company in a VIE structure is under the actual control of Foreign Investors or Chinese Investors. The Note indicates that MOFCOM is considering how to address this issue and provides several potential solutions that might be adopted. Each of the potential solutions involve a registration or application procedure with MOFCOM and various degrees of MOFCOM investigation to determine whether the actual controlling party of a foreign-invested entity is a Foreign Investor or a Chinese Investor.

The VIE structure is often used by Chinese companies in order to obtain foreign venture capital investment or when listing their shares on foreign stock markets. In fact, over half of all Chinese companies listed on overseas stock exchanges use the

VIE structure.²⁰ As a result, the Draft FIL could have a very material impact on many Chinese companies listed on foreign stock exchanges if it is determined that the actual controlling parties of those entities are Foreign Investors and not Chinese Investors. The Draft FIL, however, might not affect Chinese companies listed on foreign stock exchanges if the company's actual controller is determined to be Chinese Investors pursuant to the "actual control" principle.

For example, Robin Yanhong Li ("Mr. Li"), the founder of Baidu, Inc., China's leading internet search company ("Baidu"), only owns approximately 15.9% of the company's ordinary shares. However, based on Baidu dual-class share structure, the company's ordinary shares are divided into Class A ordinary shares and Class B ordinary shares, and holders of Class A ordinary shares are entitled to one vote per share, while holders of Class B ordinary shares are entitled to ten votes per share. According to Baidu's public disclosure, as of February 28, 2014, the total amount of Baidu outstanding shares was approximately 35 million, consisting of approximately 27.5 million Class A ordinary shares and approximately 7.5 million Class B ordinary shares. Mr. Li and his wife hold all of the Class B ordinary shares and therefore control approximately 67% of Baidu's voting power.²¹ Since Mr. Li is a PRC citizen and assuming Mrs. Li is a PRC citizen, Baidu would be deemed to be controlled by Chinese Investors, and able to retain its VIE structure.

Alibaba Group Holding Limited, China's leading e-commerce company ("Alibaba"), is another example where the Draft FIL might not affect the VIE structure.²² According to Alibaba's public filings, after their initial public offering, only approximately 13% of Alibaba shares are held by the company's founders, while major foreign shareholders such as SoftBank and Yahoo hold approximately 32% and 16% of Alibaba shares respectively.²³ Prior to the initial public offering, however, Alibaba established a partnership (the "Alibaba Partnership"), which has effective control over the Alibaba board of directors through its right to nominate up to a simple majority of the Alibaba directors, subject to shareholder approval.²⁴ As a result, if the Alibaba Partnership, which currently includes 30 members, is controlled by Chinese nationals, then Alibaba will mostly likely be deemed to be controlled by Chinese Investors, and will be able to retain its existing VIE structures. Although the identity of the 30 Alibaba Partnership members is not clear from the company's public filings, there is a very high probability that the majority of these members are PRC nationals.

²⁰ Accounting Matters: Variable Interest Entities in China, by Paul L. Gilles, September 2012.

²¹ See Page 106 of Baidu's annual report on the Form 20-F for the year ended on December 31, 2013 at the SEC website.

²² Alibaba Claims Title for Largest Global IPO Ever with Extra Share Sale, Forbes, September 22, 2014.

²³ See Page 250 of the Amendment No.7 to Alibaba's registration statement on Form F-1 at the SEC website.

²⁴ See Page 7-8 and 230 of the Amendment No.7 to Alibaba's registration statement on Form F-1 at the SEC website.

In contrast, the VIE structures of some companies listed overseas could be affected by the Draft FIL depending on the company's corporate governance structure. According to public filings of Sina Corporation ("Sina"), as of March 31, 2014, only approximately 2.8% of the outstanding Sina shares are held by the founders, while other major shareholders such as BlackRock and Thomburg hold approximately 8.3% and 7.0% of Sina's shares respectively²⁵. Here, unlike with Alibaba, the major shareholders (including the founders) do not have different voting rights from other shareholders²⁶. In addition, Sina's public disclosure did not indicate any special board appointment rights held by particular shareholders, which would need to be disclosed if present. As a result, the actual controller of Sina could be deemed to be Foreign Investors under the Draft FIL, and if so, could jeopardize the legality of Sina's VIE structure.

Although we have not conducted a comprehensive review of the public filings for Chinese companies that have VIE structures and are listed on overseas stock exchanges, we suspect that many of these companies do not have dual voting arrangements like Baidu or partnership control arrangements like Alibaba. As a result, the validity of the VIE structures for many Chinese companies listed on the New York Stock Exchange, Nasdaq and elsewhere could be called into question if the Draft FIL is adopted in its current form. Given the material damage that this could cause to many of China's leading internet companies, such as Tencent, it would not be surprising to see MOFCOM take a cautious approach with implementing the Draft FIL, particularly with respect to Chinese companies with VIE structures that are already listed on overseas stock exchanges.

Going forward, if the Draft FIL is adopted in its current form, we expect to see changes in the corporate governance arrangements for Chinese companies in industries where foreign investment is restricted or prohibited to ensure that Chinese Investors maintain actual control over these companies. From this perspective, the Draft FIL could be viewed as formally opening many more sectors of China's economy to foreign investment, provided that Chinese Investors maintain actual control over the foreign-invested companies.

2. Restrictions on Foreign Investors Equity Ownership Threshold in E-Commerce Business Lifted in Shanghai Free Trade Zone

On January 13, 2015, the Ministry of Industry and Information Technology (工业和信息化部) ("MIIT") issued a "Notice on Lifting Shareholding Restrictions on

²⁵ See Page 101-102 of Sina's annual report on Form 20-F for the year ended on December 31, 2013 at the [SEC website](#).

²⁶ See Page 102 of Sina's annual report on Form 20-F for the year ended on December 31, 2013 at the [SEC website](#).

Foreign Investors for Online Data and Trade Processing Businesses (E-Commerce Businesses) in China (Shanghai) Free-Trade Pilot Program (关于在中国（上海）自由贸易试验区放开在线数据处理与交易处理业务（经营类电子商务）外资股权比例限制的通告)”²⁷, which allows a wholly foreign-owned entity access into the online data and trade processing services (i.e., operating e-commerce businesses) in the Shanghai Free Trade Zone (“FTZ”). Such services also include operating online platforms to sell third party goods. Previously, the maximum threshold for foreign investment in businesses providing these services from the Shanghai FTZ was 55%.²⁸

3. Game Console Ban Lifted Nationwide

On December 21 2014, the State Council (国务院) issued the “Notice on Promoting the Replicable Experience from the Experimental Reform in the China (Shanghai) Pilot Free Trade Zone (关于推广中国（上海）自由贸易试验区可复制改革试点经验的通知)” (“Circular 65”)²⁹, which allows the nationwide production and sale of game and recreation devices, including traditional video game consoles such as Xbox and PlayStation.

It is worth noting that, even though Circular 65 allows both PRC domestic companies and the foreign-invested companies to produce and sell game consoles, the content of the game console, i.e. the games, still needs to be reviewed by China’s cultural authorities, including the Ministry of Culture (文化部), before the game can be released into the PRC domestic market.

4. Provisions on Enterprise Mass Layoffs Published for Public Comment

On December 31, 2014, the Ministry of Human Resources and Social Security (人力资源社会保障部) (“MOHRSS”) issued the “The Draft of Provisions on Enterprise Mass Layoff (企业裁减人员规定（征求意见稿）)”³⁰ to solicit public comments. The deadline to submit comments was January 31, 2015.

The draft relates to situations where an employer proposes to dismiss more than 20 employees or a number of employees that is equal to or exceeds 10% of the workforce. Currently these mass layoff situations are addressed under Section 41 of the PRC Labor Contract Law. The proposed regulation adds new requirements that an employer must satisfy before implementing a mass layoff. For example, the proposed rules would require employers to make efforts to avoid such mass layoffs, and require

²⁷ See [MIIT website](#) for reference.

²⁸ See [Opinions on Further Opening up Value-added Telecommunication Business to Foreign Investments in China \(Shanghai\) Pilot Free Trade Zone \(关于中国（上海）自由贸易试验区进一步对外开放增值电信业务的意见\)](#) issued by MIIT and the Shanghai government in January 2015.

²⁹ See [State Council website](#) for reference.

³⁰ See [MOHRSS website](#) for reference.

employers to submit to the local MOHRSS evidence demonstrating the actions taken by the employer to avoid the mass layoffs.

5. SAFE Launched the Pilot Operation of Cross-Border Foreign Currency Payments to Support the Development of E-Commerce

On January 20, 2015, the State Administration of Foreign Exchange (国家外汇管理局) (“SAFE”) issued the “Notice on the Pilot Operation of Cross-Border Foreign Currency Payments to Be Conducted by Payment Agencies (关于开展支付机构跨境外汇支付业务试点的通知)”³¹, which announced the nationwide launch of the pilot operation of cross-border foreign currency payments. The pilot program will be conducted by select payment agencies that are authorized to provide foreign exchange payment and settlement for parties to a cross-border e-commerce transaction. The Circular includes the following main provisions:

- (i) Increase of Single Transaction Limit. The value limit for a single online shopping transaction has been increased from the monetary equivalent of US\$10,000 to US\$50,000.
- (ii) Standardization of Procedures for Pilot Operation. In order to qualify as a participant in the pilot operation, a payment agency must first register in the "Catalogue of Enterprises Engaged in Trade Foreign Exchange Payments and Receipts" at the foreign exchange authority in the domicile of such agency.
- (iii) Strengthening Risk Control. Payment agencies are required to strictly perform their obligations to (a) verify the authenticity of transactions, (b) maintain the relevant transaction records for five years, and (c) accurately report the relevant business data and information in a timely manner.

Currently, only PRC domestic companies are allowed to serve as payment agencies to operate the cross-border foreign currency payments in China. Pursuant to the notice mentioned above, in order to operate the business related to cross-border foreign currency payments, the payment agencies are required to register in the Business Directory for Foreign Exchange Receipts and Payments in Trade (贸易外汇收支企业名录).³² In addition, to obtain such registration, payment agencies must have already obtained the Payment Business Permit (支付业务许可证) issued by the People’s Bank of China (中国人民银行), however, these Payment Business Permits are only issued to PRC domestic companies³³.

³¹ See [SAFE website](#) for reference.

³² See Article 4 of Notice on the Pilot Operation of Cross-Border Foreign Currency Payments to Be Conducted by Payment Agencies (关于开展支付机构跨境外汇支付业务试点的通知).

³³ See Article 8 of Administrative Measures of People's Bank of China on Payment Services Provided by

6. State Council Encourages Innovation and Development of Cloud Computing

On January 30, 2015, the State Council (国务院) issued the “Opinions on Promoting Innovation and Development of Cloud Computing and Cultivating New Formats for the Information Services Industry (国务院关于促进云计算创新发展培育信息产业新业态的意见)”³⁴. The main points of the opinion include:

- (i) That promoting cloud computing will better serve information sharing and resource innovation. In addition, cloud computing will decrease start-up costs and build new market focal points. Thus, the development of cloud computing plays an important role in the construction of an innovation-oriented country.
- (ii) That during the development of cloud computing, the market should play a decisive role in allocating resources, the government should reduce administrative intervention and market rules should be fair, transparent and open.
- (iii) That cloud computing enterprises should open up international markets through mergers and acquisitions, joint ventures and overseas cloud computing data centers.

7. Administrative Provisions for Account Names of Internet Users Released

On February 4, 2015, the Cyberspace Administration of China (国家互联网信息办公室) issued the “Administrative Provisions on Account Names of Internet Users (互联网用户账号名称管理规定)”³⁵ to standardize services for, and usage of, account names, portraits and profiles. The new provisions will become effective on March 1, 2015.

Under these new provisions, account names of internet users refers to the account names of entities or individuals that are registered or used for services, and allow the users to post comments or articles on the internet, such as blogs, microblogs, BBS, etc. The new provisions contain the following key points:

- (i) The Cyberspace Administration of China shall supervise and manage the registration and usage of account names.

Non-financial Institutions (非金融机构支付服务管理办法) issued by People’s Bank of China in September 2015.

³⁴ See [State Council](#) website for reference.

³⁵ See [State Council](#) website for reference.

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- (ii) The provisions specify the internet service providers' management responsibilities such as examining and verifying account names, and not registering account names that include "illegal and offensive" information.
 - (iii) The provisions indicate that the principle of account registration is "real name backstage, voluntary display front stage (后台实名, 前台自愿)", which means that internet users must register their real names and identifying information with the service provider platforms, but they are not required to use their real name as the screen name visible to other users.

These provisions are not the first regulations that attempt to implement a real name registration regime for internet services in China. For example, in July 2011 in the online game industry, eight government departments jointly released a notice requiring online game companies to incorporate a real-name verification system into their games.³⁶ In addition, in December 2011, the Beijing city government issued rules requiring full implementation of a real-name registration system for micro blog services based in Beijing, which includes Sina Weibo – a Twitter style service that is extremely popular and politically controversial in China.³⁷ Furthermore, in December 2012, the Standing Committee of the National People's Congress (全国人民代表大会常务委员会) issued a decision, which prescribed that the internet service providers allowing users to post comments or articles on the internet, such as blogs, microblogs, instant messaging, BBS, etc., shall require users to provide their real identity information when entering into an agreement with the internet service provider or when confirming the provided internet services.³⁸

The real-name registration requirements set forth in these rules and regulations have not, however, been fully implemented because effective implementation is constrained by costs associated with the verification of real-name registration information provided by users. The Ministry of Public Security (公安部) has outsourced real-name verification services to a state-owned enterprise under its control, the National Citizen Identity Information Center (全国公民身份证号码查询服务中心) ("NCIIC"). However, considering the tremendous amount of internet accounts and technical limitations of NCIIC, it has not yet been feasible or practical for the internet service providers to fully comply with the real-name registration requirements. As a result, it has been fairly easy for tech savvy users to avoid using

³⁶ See "China Initiates Work on Online Gaming Real-Name System", posted at marbridgeconsulting.com on July 30, 2011. See also the Notice Regarding China Initiates Work for the Online Game Real-Name System (关于启动网络游戏防沉迷实名验证工作的通知), issued by eight government departments including SAPPRFT and the Ministry of Public Security on July 1, 2011.

³⁷ See Article 9 of Several Rules on the Administration of Weibo Development (北京市微博客发展管理若干规定) issued by the Beijing city government on December 16, 2011.

³⁸ See Article 6 of Decision of the Standing Committee of the National People's Congress on Strengthening Network information Protection (全国人民代表大会常务委员会关于加强网络信息保护的決定) issued on December 28, 2012.

their real name in registering with internet service providers.

The new provisions reiterate the prior regulations and specify the responsibilities of government authorities, internet providers and internet users. It is not yet clear, however, whether this latest set of real-name registration regulations will be implemented with more success than past attempts. Successful implementation of a real-name registration regime for China's internet would most likely have a material chilling effect upon the often lively discussions that take place on China's internet, including the various microblogging platforms such as Sina's Weibo and Tencent's Weixin.

8. China is Strengthening the Control of Cyber Security

On January 23, 2015, the Central Committee Political Bureau of the Communist Party of China (中共中央政治局) deliberated and passed a National Security Strategic Framework (国家安全战略纲要)³⁹, although this framework has not yet been released to the public. In light of the National Security Framework, it seems like the cyberspace security review system in China has entered a critical stage for high level decision-making, and we expect detailed regulations and rules might be released in the near future.

China has recently made efforts to strengthen cyberspace security review, already taking various actions including:

- (i) On February 27, 2014, the Central Leading Group for Cyberspace Security and Information Affairs (中央网络安全和信息化小组), led by Chinese President Xi Jinping, was established to guide the management of cyberspace security in China;
- (ii) On August 28, 2014, the Ministry of Industry and Information Technology (工业和信息化部) issued an Opinion on Strengthening Cyberspace Security for Telecom and Internet Industry (工业和信息化部关于加强电信和互联网行业网络安全工作的指导意见); and
- (iii) On December 26, 2014, the China Banking Regulatory Commission ("CBRC") issued the Guide for Bank Information Technology Security Application (2014-2015) (银行业应用安全可控信息技术推进指南 (2014—2015 年度)) ("Circular 317"), which requires companies that supplied computer equipment for Chinese banks to register hardware and the source code for software with CBRC. However, the CBRC subsequently issued an interpretation document to Circular 317⁴⁰, which states that the procedures of

³⁹ See [Xinhua website](#) for reference.

⁴⁰ See [CBRC website](#) for reference.

source code filing are still under formulation. As a result, it is still not clear yet whether the new provisions will be successfully implemented.

Moreover, on November 2014, the Standing Committee of the National People's Congress (全国人大常委会) (“SCNPC”) issued a draft of Anti-Terrorism Law (反恐恐怖主义法) to solicit public comments.⁴¹ This proposed Anti-Terrorism Law has raised foreign companies’ concern that they might be under more regulatory pressure. Under the proposed Anti-Terrorism Law, the telecommunication and/or internet service providers shall:

- (i) Preset technical interfaces (技术接口) (i.e. create backdoors in the systems giving authorities surveillance access) and report encryption plans (密码方案) to competent authorities for their review;
- (ii) Keep relevant servers and domestic account data within the territory of PRC, or else the service provider will not be allowed to operate in the country; and
- (iii) Censor terrorism-related internet content and supply law enforcement authorities with relevant information.

⁴¹ See SCNPC website for reference.