



大成奢侈品与时尚法律专递

(十一月, 第4期)

Dentons Luxury and Fashion Legal
Newsletter

(Nov, Vol. 4)

大成 DENTONS

上海市浦东新区银城中路501号上海中心15/16层(200120)
15/F, 16/F Shanghai Tower, 501 Yincheng Road (M), Pudong New Area, Shanghai
电话 / Tel: +8621 58785888 传真 / Fax: +8621 58786173

目录

CONTENTS

市场动态 | Market Movements

LVMH 6.4 亿欧元收购德国高端行李箱品牌日默瓦 (Rimowa) 八成股权
LVMH to Take 80% Stake in German High-end Luggage Brand Rimowa

传 LVMH 欲进军体育行业，有意收购意大利高档自行车品牌 Pinarello
That's The Latest Rumor – LVMH is Buying Italian Prominent Cycling Brand Pinarello

山东如意集团完成对法国时尚集团 SMCP 的收购工作
Shandong Ruyi Group Finalised the Acquisition of French Fashion SMCP Group

中国女装品牌江南布衣香港上市
Chinese Brand of Women's Dress JNBY Listed on HKEx

案例研究 | Case Study

恒源祥与彪马“羊头”商标侵权纠纷案——图样设计前的商标近似预检的必要性
Hengyuanxiang v. PUMA Trademark Infringement Dispute---- The Necessity of Similarity
Preview of Trademark Before Design

立法动态 | Regulation Update

《全国人民代表大会常务委员会关于修改〈中华人民共和国外资企业法〉等四部法律的决定》——外商投资企业部分改变为备案制
Decision of the Standing Committee of the National People's Congress on Revision of Four Laws Including the Law of the People's Republic of China on Wholly Foreign-owned Enterprises – foreign invested enterprises' matters partially changed to filing requirement

市场动态

Market Movements

LVMH 6.4 亿欧元收购德国高端行李箱品牌日默瓦 (Rimowa) 八成股权

LVMH 在 10 月 4 日发布了收购德国高端行李箱品牌日默瓦 (Rimowa) 的消息，这也是该集团在德国第一次收购行动。LVMH 将以 6.4 亿欧元收购日默瓦 80% 的股权，剩余的股权由企业创建人的孙子 Dieter Morszeck 持有，并继续担任 Rimowa 的首席执行官，维持其对品牌的领导地位。但 LVMH 集团总裁 Bernard Arnault 年仅 24 岁的小儿子 Alexandre Arnault 也将成为 Rimowa 的联合 CEO，与 Dieter Morszeck 共同负责公司的日常运营。

行业分析师认为，LVMH 的此次收购行动是对新秀丽 (Samsonite) 并购图明 (Tumi) 做出的回应。此前新秀丽以 18 亿美元收购了箱包品牌途明。随着旅游业的发展，箱包行业也将从中获利。该交易还须得到反垄断机构的同意，预计到明年一月将尘埃落定。

LVMH to take 80% stake in German High-end Luggage Brand Rimowa

LVMH announced on Oct. 4th that it had agreed to purchase German high-end luggage brand Rimowa, which is its first acquisition in Germany. It is said LVMH would buy 80% stake in Rimowa for 640 million Euro, and Dieter Morszeck, the the founder's grandson, would continue to hold the remaining equity stake of 20% in the business and hold the CEO position, maintaining his leadership functions at the brand. Meanwhile, Alexandre Arnault, the 24-year-old son of LVMH chairman Bernard Arnault, would become co-chief executive of Rimowa, alongside Morszeck.

An industry analyst said that LVMH's acquisition of Rimowa might be a response to Samsonite's acquisition of Tumi. Before that, Samsonite bought Tumi for 1.8 billion USD. With the boom of the tourism industry, the luggage industry will also benefit from it. The transaction must be agreed by antitrust authorities, and it is expected to be closed in January next year.

传 LVMH 欲进军体育行业，有意收购意大利高档自行车品牌 Pinarello

据意大利媒体消息，LVMH 集团正在考虑收购意大利高档自行车生产商 Pinarello。在该消息中提到，双方已经通过一家米兰公司进行了长达数月的商谈，目前已经接近尾声，近期之内便会达成最终协议，交易完成之后，Pinarello 的现任 CEO Fausto Pinarello 将会继续负责管理公司。

高端奢侈品进入体育休闲领域已经不是个例，包括 LV 的高尔夫球袋、Dolce & Gabbana 的豹纹自行车、GUCCI 的马术头盔、Cartier 的潜水腕表、Chanel 的滑雪板和网球拍，都是奢侈品在体育休闲领域的表现。据悉，本次收购只是 LVMH 集团进军体育界战略的一部分，未来还可能会在体育、健康和娱乐等行业展开进一步的投资。

That's The Latest Rumor – LVMH is Buying Italian Prominent Cycling Brand Pinarello

According to Italian media, LVMH is considering buying Italian high-end cycling manufacturer Pinarello. It is said that negotiations for the purchase began several months ago by a firm in Milan between Pinarello and LVMH, and the definitive agreements might be reached recently. After the completion of the transaction, Fausto Pinarello will remain the CEO of the brand.

It is not uncommon for luxury brands entered into leisure sports field, including LV's golf bag, Dolce & Gabbana's leopard print bike, GUCCI's horseman helmet, Cartier's diving watch and Chanel's skis and tennis rackets, which all represented the performance for luxury brand entering to leisure sports field. It is said that the acquisition is only part of the LVMH to enter the sports industry strategy. In the future, it may also be in sports, health, entertainment and other industries to expand further investment.

山东如意集团完成对法国时尚集团 SMCP 的收购工作

中国山东如意科技集团（“如意集团”）收购法国时尚集团 SMCP 的程序已经最终完成，本次收购是中国时装企业成功收购国际品牌的罕见案例之一。SMCP 旗下三大品牌为 Sandro、Maje 和 Claudie Pierlot，在全球 34 个国家拥有 1000 多家门店。据称，如意集团将占 SMCP 多数股权，SMCP 的创始人和管理团队以及私募股权投资巨头 KKR（Kohlberg Kravis Roberts & Co. L.P.）将保留少数股权。

如意集团表示，SMCP 的品牌独特性和目前在巴黎的设计和创意团队将会保留，其战略和组织结构也不会发生变动，如意集团将主要为 SMCP 在全球市场提供零售方面的支持。SMCP 的 CEO 兼总裁 Daniel Lalonde 表示，凭借如意集团的专业优势，三大品牌将继续拓展欧洲、北美、中东，特别是亚洲市场。

如意集团总部位于山东济宁，在中国及全球范围内生产销售羊毛纺织品，自有如意品牌在亚太市场销售网点超过 3000 个，集团子公司山东济宁如意毛纺织股份有限公司（上证 002193）为 A 股主板上市公司。本次收购并非如意集团的第一次海外收购。2010 年 6 月，如意集团出资约 4400 万美元，收购了日本知名服装上市公司 Renown 41.53% 的股份，成为第一大股东，这是中国民企收购日本东京交易所主板上市公司第一案。著名男装品牌 D'URBAN 和时尚品牌 Anya Hindmarch 就隶属于 Renown 旗下，此外，Renown 还是 Aquascutum 和 Lanvin 等国际品牌的日本代理商。

Shandong Ruyi Group Finalised the Acquisition of French Fashion SMCP Group

Shandong Ruyi Group finalised the acquisition of French Fashion Group SMCP, which was one of rare cases of acquisition of international brands by Chinese fashion enterprises. SMCP, with its brands Claudie Pierlot, Maje and Sandro, has more than 1000 stores in 34 countries. It was said that Shandong Ruyi Group would own the majority of the shares of SMCP, and SMCP's founders and the management would remain as minority shareholders, together with the PE investment giant KKR (Kohlberg Kravis Roberts & Co. L.P.).

Ruyi Group announced that it intended to maintain unique identity of the SMCP brands, with the SMCP design and creative teams continuing to work from its Paris headquarters. SMCP would retain its strategy and organizational structure while benefitting from Shandong Ruyi's global retailing expertise. Daniel Lalonde, CEO and president, said that SMCP would

continue expanding in areas where the three brands had significant potential: Europe, North America, the Middle East and particularly Asia.

Ruyi Group is located in Jining, Shandong with the business of producing and sale of wool products across China and over the world. It has over 3000 stores in the Asia Pacific markets and a subsidiary listed on the mainboard of Shanghai Stock Exchange. This was not the first oversea acquisition of Ruyi Group. In June 2010, Ruyi Group purchased 41.53% shares of the well-known Japanese fashion public company Renown and became its largest shareholder, which was the first acquisition of a listed company on Tokyo Stock Exchange by a Chinese private enterprise. Renown runs brands such as D'URBAN and Anya Hindmarch, and it is also the distributor of Aquascutum and Lanvin in Japan.

中国女装品牌江南布衣在香港上市

中国女装品牌江南布衣 (03306.HK) 于 10 月 31 日成功在香港上市。江南布衣成立于 1997 年，总部位于杭州，目前集团主要拥有 5 个品牌包括女装 JNBY、男装“CROQUIS / 速写”、童装 jnby by JNBY、“Pomme de terre / 蓬马”以及高端女装 less。据招股书介绍，集团目前拥有 1316 家零售店，覆盖中国所有一线城市和绝大多数二线城市及全球 12 个国家和地区，并在天猫、京东、唯品会、微信线上销售平台开展线上销售。

据招股书披露，集团引入一名基础投资者天海国际控股，根据基础投资协议约定认购金额为 1500 万美元。天海国际在香港注册成立，其母公司天海花边有限贵司 (Tianhai Lace Co., Ltd) 为一家专业设计及制造蕾丝及其他布料的纺织制造公司。有关江南布衣获联想旗下弘毅资本投资 1,000 万美元的传闻，目前未有公告证实。



Chinese Brand of Women's Dress JNBY Listed on HKEx

The Chinese brand of women's dress JNBY (03306.HK) was successively listed on Hong Kong Stock Exchange on December 30. JNBY was established in 1997 in Hangzhou, China and runs five brands including women's clothing "JNBY", men's "CROQUIS", junior's "jnby by JNBY", "Pomme de terre" and high-end women's "less". According to the prospectus, the Group now has 1316 retail stores across China and 12 countries and regions with online stores on Tmall, JD, VIP.com and Wechat.

According to the prospectus, the Group introduced a cornerstone investor Tianhai International Holdings Limited. In accordance with the cornerstone investment agreement, it shall subscribe for offer shares for an aggregate amount of US\$15 million. Tianhai International was incorporated in Hong Kong, and its parent company Tianhai Lace Co., Ltd. is a textile manufacturing company specializing in the design and manufacture of lace and other fabric. However, So far no announcement confirms that JNBY obtains the investment of US\$10 million by Hong Yi Capital under Lenovo.

案例研究 Case Study

恒源祥与彪马“羊头”商标侵权纠纷案——图样设计前的商标近似预检

恒源祥，上海老字号，以生产羊毛羊绒产品得名。2016年4月，恒源祥以彪马的羊年产品的标识侵犯了其商标权为由，将彪马上海公司和佛山生产公司告上了法庭，向彪马索赔1200万元并请求判令佛山生产公司在侵权范围内承担400余万元连带责任。

上海黄浦区人民法院于2016年7月14日作出一审判决，判令被告彪马上海公司和佛山生产公司停止侵权并刊登声明消除影响，并在综合考虑双方当事人经营规模、商标知名度和两被告侵权情节、侵权赔偿的适当性、必要性的基础上，判令彪马上海公司赔偿原告290万元，佛山生产公司承担其中80万元的连带责任。由此来看，原告恒源祥的诉讼请求获得了绝大部分的支持。

我们将法院对本案的争议焦点、以及原被告双方对争议焦点提出的意见归纳如下：

(1) 两被告使用的涉案羊图形标识是否属于商标法意义上的商标使用。

被告彪马表示，其公司的产品上面都有非常显著“PUMA”字样以及美洲豹图形的商标，而涉案的服装、跑鞋只是羊年的特别款，故用了羊年的吉祥符号，即涉案商标，但它其实是对中国古代金文“羊”字的使用，而非商标性的使用。

法院认为，虽然涉案标识系中国古代金文“羊”字，但是对于当代大众而言，该标识并非日常使用文字，而具有一种图形概念，这也是原告的商标注册申请获得批准的原因。该标识即使有古代金文“羊”字含义，但经过长期使用已经具有一定显著性，能起到区别商品来源的商标标识作用。所以，被告使用涉案标识属于商标法意义上的商标使用。

(2) 两被告的行为是否侵犯原告的注册商标使用权。

原告认为，原告的羊图形商标即涉案商标的申请时间在被告使用羊图形标识之前，并且根据已公开的工商局商评委的裁定书以及北京一中院和北京高院的行政判决书的认定，涉案商标经过原告长期使用和宣传已经达到驰名程度，可以认定为驰名商标。被告在其天猫官方店和上海、沈阳的实体店中销售的商品，都使用了涉案商标。

被告彪马认为，其本身具有极高的知名度，没有侵权故意之企图。被告佛山生产公司认为其只是接受彪马委托而生产涉案产品，也不存在侵权故意。

但是，法院认为对“羊年”的表达完全可以采用和原告商标不同的设计，被告作为大型知名专业运动服装企业，在进行产品表示设计时，应当有能力尽到商标审核的注意义务，但实际却没有。同样，佛山生产公司不仅生产了涉案服装、跑鞋，还在上海、沈阳实体店进行了销售，在生产和销售时都没有尽到注意义务，对具有较高知名度的涉案商标的权属情况进行审核，该行为已经构成商标法第五十七条所述的“销售侵犯注册商标专用权的商品”的行为。

(3) 两被告损害赔偿金额的如何确定。

商标法第六十三条规定，侵犯商标专用权的赔偿数额可以根据权利人实际损失确定，实际损失难以确定的，可以按照侵权人因侵权所获利益确定。本案中，法院认为原告的证据不足以证明实际损失达到 1200 万元，故按照侵权人因侵权所获利益确定。根据法院保全的证据，被告涉案商品的销售利润约 600 万元，考虑到该利润并非完全依靠侵害原告商标所得，在充分考虑涉案商标对被告所获利润的贡献度以及侵权赔偿应当遵循的比例性原则等因素后，最终确定了 290 万的赔偿金额。

本案原告恒源祥的代理律师为本所知识产权部高级合伙人余力和争议解决部合伙人麦欣律师。我们分析认为，本案原告胜诉的关键在于两位律师为原告提供了非常专业的代理意见，并在开庭前对证据进行了完整、精确的保全工作。

为了证明被告确实广泛使用了原告商标，原告对上海和沈阳商场所销售的印有涉案商标的商品，包括衣服、跑鞋都进行了采样购买并对采购全过程进行了公证。并且，还对被告天猫官方店所销售的印有涉案商标的商品，包括衣服、跑鞋都进行了采样购买并对采购全过程也进行了公证。

对于和本案类似的屡屡发生的商标侵权案件，我们建议，无论是销售者还是生产者，在对自己商品的商标图样设计前，应进行商标近似预检，这样才能有效避免因疏忽大意导致侵权而造成原可能避免的损失。

(恒源祥和彪马商标侵权纠纷一案，由大成律师事务所知识产权部高级合伙人余力和争议解决部合伙人麦欣律师作为原告代理，如需进一步了解本案，可联系我们获取判决书原文)

Hengyuanxiang v. PUMA Trademark Infringement Dispute---- The Necessity of Similarity Preview of Trademark Before Design

The old Shanghai brand Hengyuanxiang is famous for its wool and cashmere products. In April 2016, Hengyuanxiang sued PUMA Shanghai company and its factory in Foshan for the infringement of the "goat" trademark by using a very similar goat logo on PUMA products, claiming against PUMA Shanghai company for the compensation of RMB 12 million and claiming against PUMA's factory in Foshan for the compensation of a joint liability of RMB 4 million.

Shanghai Huangpu People's Court, the court of first instance, made the decision that PUMA Shanghai company and Foshan factory should stop infringement, and publish an announcement on the newspaper to eliminate the adverse impact on Hengyuanxiang. Meanwhile, considering the business scale, popularity of trademark, infringing acts, the appropriateness and necessity of compensation, the court also decided that PUMA Shanghai company should compensate RMB 2.9 million, of which its Foshan factory should take the joint liability of RMB 0.8 million. So, the claims of Hengyuanxiang were mainly accepted by the court.

The following were the main issues at dispute and the corresponding opinions of the court:

- (1) Whether the goat logo by the two defendants were used as a trademark.

PUMA Shanghai company defended that all products were attached with a very obvious logo of "PUMA" and a leopard picture. The clothes and shoes products involved in this case were special editions for Chinese year of Goat. That's why they

used the logo of goat, which was a pictographic character in Ancient China's Jin dynasty. Therefore, it was not used as a trademark under the *Trademark Law*.

The court decided that although the logo was a pictographic character of goat in Ancient China's Jin dynasty, for the contemporary people, that logo was not a daily used character. Instead, it had a concept in itself, which under the long-term use by the plaintiff has the function to discriminate the source of the products, that's why the plaintiff's application of trademark registration of the goat logo was approved. Therefore, the goat logo was used as a trademark by the two defendants.

(2) Whether the two defendants infringed the registered trademark of the plaintiff.

The plaintiff claimed that the "goat" trademark was registered before the defendant's use of the goat logo. Meanwhile, according to the trademark review and adjudication board of Beijing AIC and the administration judgments made by Beijing First Intermediate People's Court and Beijing Higher People's Court, the plaintiff's "goat" trademark had been well-known after long-term use and advertising by the plaintiff, and should be decided as a well-known trademark. The first defendant used the "goat" trademark on its products sold on its Tmall store and retail stores in Shanghai, Shenyang etc.

The first defendant argued that it was a very famous brand and had no intent of infringement. The second defendant, Foshan factory argued that it produced the products as required by the first defendant, having no intent of infringement.

However, the court was of the opinion that the first defendant could use other logos instead of the plaintiff's trademark for Chinese year of Goat, and as a large and famous sports-wear company, the first defendant was responsible to preview the trademarks before design the logo, however, it didn't do so. In the same way, Foshan factory not only produced the clothes and shoes, but also sold them in the stores in Shanghai and Shenyang and neither did it performance the duty of care in sale. They failed to check the well-known registered trademark of "goat" before sale and production in this case, which should be considered as 'selling of the products which infringed the exclusive right to use trademark', according to Article 57 of *Trademark Law*.

(3) How to decide the amount of the compensation by the two defendants

Pursuant to Article 63 of the *Trademark Law*, the amount of the compensation of infringement of the exclusive right to use trademark can be decided depending on the actual damages of the owner. In the circumstance where the actual damages cannot be calculated, it can be decided basing on the gains of the infringer. In this case, the court considered that the evidences submitted by the plaintiff were insufficient to prove its actual damages amounted to RMB 12 million, and turned to consider the amount of compensation based on the gain of the infringers. The gains of the infringers were about RMB 6 million based on the evidences preserved by the court. Giving full consideration of the fact that the gains of the infringers were not fully contributed by the trademark of the plaintiff, the contribution of the "goat" trademark to the sales profits of the gains of the infringers, the principle of proportion

of compensation, the court finally decided on the compensation of RMB 2.9 million.

The lawyers of the plaintiff are from Dentons Shanghai Office, who are lawyer Yu Li, Senior Partner, Department of Intellectual Property Rights and lawyer Mai Xin, Partner, Department of Litigation and Arbitration. In our view, the key of the success of the case is that two lawyers provided professional opinions and made complete and accurate preservation of evidences before hearing.

In order to prove that the defendant widely used the trademark, the plaintiff purchase clothes, shoes of the defendants from the stores in Shanghai and Shengyang, and made notarization of all these purchasing process and all the products attached with “goat” trademark that were sold on Tmall store.

Regarding the similar cases of trademark infringement, we suggested that either sellers or producers make similar preview before designing their trademarks to prevent trademark infringement and losses therefrom due to carelessness.

(Dentons Shanghai Office represented the plaintiff in Hengyuanxiang v. PUMA Trademark Infringement Dispute. If you want to know more about the case, please feel free to contact us for an original copy of the judgment of this case.)

立法动态 Regulation Update

《全国人民代表大会常务委员会关于修改〈中华人民共和国外资企业法〉等四部法律的决定》——外商投资企业部分改变为备案制

《决定》、《备案办法》的出台以及《22号公告》

2016年9月3日，十二届全国人大常委会第二十二次会议通过了《全国人民代表大会常务委员会关于修改〈中华人民共和国外资企业法〉等四部法律的决定》（注：四部法律分别为《外资企业法》、《中外合资经营企业法》、《中外合作经营企业法》、《台湾同胞投资保护法》）（以下简称《决定》）。《决定》对相关行政审批条款作出修改，将不涉及国家规定准入特别管理措施的外商投资企业和台胞投资企业的设立及变更，由审批改为备案管理。《决定》已于2016年10月1日起施行。

《决定》同时规定，在2016年10月1日施行之日起，之前关于上海、广东、天津、福建自贸区有关行政审批文件的效力相应终止。

为确保法律衔接顺畅，2016年10月8日，国家发改委和商务部共同发布《国家发展改革委、商务部公告2016年第22号》（以下简称“《22号公告》”），进一步明确：外商投资准入特别管理措施范围按《外商投资产业指导目录（2015年修订）》中限制类和禁止类，以及鼓励类中有股权要求、高管要求的有关规定执行。涉及外资并购设立企业及变更的，按现行有关规定执行。

根据《决定》及《22号公告》，适用于备案制的情形如下：

	涉及外资并购的	其他
负面清单内	审批	审批
负面清单外	审批	备案

在操作层面，商务部于2016年10月8日发布了《外商投资企业设立及变更备案管理暂行办法》（以下简称《备案办法》），作为有关外商投资企业设立及变更备案管理的规定，《备案办法》于2016年10月8日施行。

根据《决定》修改为备案管理的事项

《决定》一共只有四条，对应到四部法律的各自只有一条，内容类似，均是增加一条关于行政审批适用备案管理的规定。例如，对《中华人民共和国中外合资经营企业法》作出修改为：增加一条，作为第十五条：“举办合营企业不涉及国家规定实施准入特别管理措施的，对本法第三条、第十三条、第十四条规定的审批事项，适用备案管理。国家规定的准入特别管理措施由国务院发布或者批准发布。”

《决定》中涉及的，由审批转变为备案管理的事项明细如下（请注意，针对四类企业的事项范围有所不同）：

- 《中华人民共和国外资企业法》：(1) 设立，(2) 分立、合并或者其他重要事项变更，(3) 经营期限申报及延长；
- 《中华人民共和国中外合资经营企业法》：(1) 合营协议、合同、章程、合营企业设立，(2) 延长合营期限，(3) 终止合营合同；
- 《中华人民共和国中外合作经营企业法》：(1) 协议、合同、章程、合作企业设立(2) 对合作企业合同作重大变更(3) 一方转让其在合作企业合同中的全部或者部分权利、义务，(4) 合作企业成立后改为委托中外合作者以外的他人经营管理，(5) 延长合作期限；
- 《中华人民共和国台湾同胞投资保护法》：(1) 设立台湾同胞投资企业。

《备案办法》中关于设立及变更备案的相关规定

毕竟《决定》和《22 号公告》只是规定了审批制的适用范围及适用事项，而审批制的具体执行方法在《备案办法》中进行了细化。

对于设立备案，《备案办法》第 5 条规定了两个备案时间供选择：(1) 取得企业名称预核准后、或(2) 在营业执照签发后 30 日内，通过综合管理系统在线进行备案。

对于变更备案，《备案办法》第 6 条规定为在变更事项发生(除非另有规定，否则为最高权力机构作出变更决议或决定的时间)后 30 日内通过综合管理系统进行在线备案。

对于审批制的系统性修改

虽然《决定》对四部法律分别只更改了一条，但牵一发动全身，《备案办法》中仅仅就设立、变更等事项进行了规定。但毕竟我国长久以来实行的外资审批制形成了很多零散的法规，要对这些法规进行全面的修订，恐怕任重而道远。

Decision of the Standing Committee of the National People's Congress on Revision of Four Laws Including the Law of the People's Republic of China on Wholly Foreign-owned Enterprises – foreign invested enterprises' matters partially changed to filing requirement

Decision, Filing Measures and Announcement No.22

On the September 3, 2016, the 22nd Session of the Standing Committee of the National People's Congress has passed the *Decision of the Standing Committee of the National People's Congress on Revision of Four Laws Including the Law of the People's Republic of China on Wholly Foreign-owned Enterprises* (hereinafter, the "Decision") (note: the four laws are: *the Law of the People's Republic of China on Wholly Foreign-owned Enterprises*; *the Law of the People's Republic of China on Sino-foreign Equity Joint Ventures*; *the Law of the People's Republic of China on Sino-foreign Co-operative Enterprises*; and *the Law of the People's Republic of China on the Protection of Investment by Taiwanese Compatriots*, respectively). The *Decision* modified the provisions concerning the approving requirements and changed the procedural requirements for establishing and changing of foreign-owned enterprises and Taiwanese companies, which are not subject to the implementation of special administrative measures for admission stipulated by the State, from approval requirement to filing requirement. The *Decision* has taken effect on October 1, 2016.

The *Decision* also provides that after October 1, 2016, regulations about the Pilot Free Trade Zones in Shanghai, Guangdong, Tianjin, Fujian shall cease to be valid.

To ensure the smooth implementation of the laws, National Development and Reform Commission (“NDRC”) and the Ministry of Commerce issued *Announcement of National Development and Reform Commission and Ministry of Commerce [2016] No.22* (hereinafter “*Announcement No.22*”) which further provides that, the scope of the special administration measures for foreign investment access is subject to the relevant provisions on the prohibited/restricted industries for foreign investment and the requirements of equities and senior executives for foreign investment in the encouraged industries as specified in the *Catalogue of Industries for Guiding Foreign Investment (Revision 2015)*. For the matters involving establishment and alteration of enterprises as a result of foreign M & A, the relevant regulations currently in effect shall apply.

According to *Decision* and *Announcement No.22*, the following situations are applicable for filing:

	Involving matters of foreign M & A	Other matters
In the Negative List	Approval	Approval
Out of the Negative List	Approval	Filing

On the practical level, the Ministry of Commerce issued *Provisional Measures for Filing Administration of Establishment and Changes of Foreign-invested Enterprises* on October 8, 2016 (hereinafter, the “*Filing Measures*”), which has taken effect on October 8, 2016.

Matters applicable for filing requirement pursuant to *Decision*

Decision has only four articles, and only one of them relates to each of the four laws. The provisions of the *Decision* are similar, all relates to applying filing requirement to some of the matters. For example, revision to the Law of the People's Republic of China on Sino-foreign Equity Joint Ventures: insert a clause as Article 15 to read as "For establishment of equity joint venture enterprises which are not subject to the implementation of special administrative measures for admission stipulated by the State, examination and approval matters stipulated in Article 3, Article 13 and Article 14 of this Law shall be subject to filing administration. Special administrative measures for admission stipulated by the State shall be promulgated by the State Council or promulgated with approval by the State Council."

A detailed list of the matters listed under the *Decision* is set forth as the following (please note that the scope of matters changed to filing requirement are different):

- *The Law of the People's Republic of China on Wholly Foreign-owned Enterprises*: (1) Establishment , (2) Division, Merger or other major changes , (3) operation period and the extension thereof;
- *The Law of the People's Republic of China on Sino-foreign Equity Joint Ventures*: (1) Equity joint venture agreements, contracts and articles of association , (2) extension of operation period , (3) termination of joint venture contract;
- *The Law of the People's Republic of China on Sino-foreign Co-operative Enterprises*: (1) the agreement, contract, articles of association and the establish of the enterprise , (2) make a major amendment to the co-operative enterprise contract , (3) any one party to Sino-foreign co-operation wishes to assign, in full or in part, its rights and liabilities as prescribed in the co-operative enterprise contract, (4) after the establishment of a co-

- operative enterprise a party other than the Chinese and foreign partners is engaged to manage the business, (5) extension of the co-operative period; and
- *The Law of the People's Republic of China on the Protection of Investment by Taiwanese Compatriots*: (1) Establishment.

Relevant provisions on establishment and modification in the Filing Measures

After all, the *Decision* and *Announcement No.22* only prescribed the scope of filing requirement, the specific measures of the filing procedure is specified in the Filing Measures.

For establishment filing, Article 5 of *Filing Measures* provides two time to file for the enterprise to choose from: (1) after obtaining the pre-approval for the name of the enterprise; or (2) within 30 days after the issuance of business license; and the filing can be made through the filing system.

For filing for changes, Article 6 of *Filing Measures* provides that, within 30 days after the occurrence of the event, the enterprise shall fill out and submit the filing through the filing system (the time when the ultimate power organization of a foreign-invested enterprise makes a change resolution or decision shall be the time when a change event of the foreign-invested enterprise happens).

Systemic Amendments of the Approving System

Though the *Decision* only made change to one article to each law, but such change will cause systematic change. Although the *Filing Measure* prescribes the procedures for establishment and changes, the long-existed approving system for foreign-investment in our country is far-reaching in a sense that many separate regulations embody such approving system. It is foreseeable that it will take a long time before all separate regulations will be amended systematically according to this amendment.

End

如需咨询任何相关问题或针对本文发表任何意见，请联系：

徐劲科 公司并购部 高级合伙人
邮箱：bailey.xu@dentons.cn

陈洲 公司并购部 律师
邮箱：joanne.chen@dentons.cn

汪楠 公司并购部 律师
邮箱：josh.wang@dentons.cn

免责声明

本法律简报所述容仅供一般性参考，并非提供任何法律意见或建议。我们不对任何依赖本文的任何内容采取或不采取行动所导致的后果承担任何形式的法律责任。

大成简介

大成律师事务所成立于 1992 年，是中国最早的合伙制律师事务所之一。2015 年 1 月，大成律师事务所与全球十大律所之一的 Dentons 律师事务所正式签署合并协议，共同打造一个全新的、布局全球的世界领先国际律师事务所。这将是目前全球律师业规模最大的律师事务所。合并后的新律所在全球统一使用中文名称“大成律师事务所”（“大成”），英文名称“Dentons”。2016 年 4 月 25 日，大成与新加坡历史最悠久、最负盛名的律师事务所瑞德正式合并。目前，新律所执业律师人数超过 7300 人，新律所将在全球设有 125 多个办公室，遍及五大洲 55 多个国家和地区，为国内外客户带来更多的法律服务优势。

大成在中国的北京、长春、长沙、成都、常州、重庆、大连、福州、广州、哈尔滨、海口、杭州、合肥、呼和浩特、黄石、吉林、济南、昆明、拉萨、南京、南通、南宁、南昌、宁波、青岛、石家庄、上海、沈阳、苏州、深圳、太原、天津、武汉、乌鲁木齐、无锡、温州、厦门、西安、西宁、银川、郑州、舟山、珠海设有分所，在中国台北设有台湾大成律师事务所。

If you have any inquiries, please feel free to contact:

Bailey Xu
Corporate and M&A Department Senior Partner
E-mail: bailey.xu@dentons.cn

Joanne Chen
Corporate and M&A Department Attorney-at-law
E-mail: joanne.chen@dentons.cn

Josh Wang
Corporate and M&A Department Attorney-at-law
E-mail: josh.wang@dentons.cn

Disclaimer

This newsletter is only for general reference, not for giving any legal advice or suggestion. We do not take any responsibility of any result caused by any conduct or not taking any conduct depending on this newsletter.

Introduction of Dentons

Founded in 1992, Dacheng Law Offices is one of the first partnership law firms in China. In January 2015, Dacheng Law Offices and Dentons, one of the top 10 global law firms, signed their contract of combination in order to build a new and global leading international law firm in the world. The new law firm is now the largest law firm globally. The new law firm, after the combination, will be known as “大成律师事务所” in Chinese and “Dentons” in English. On 25th April 2016, Dentons and Rodyk, the most famous and oldest law firm in Singapore combined. Now, the new law firm has over 7300 lawyers. It will show more superiority to national and global clients in more than 125 locations serving 55-plus countries and areas over the five continents.

Dentons China Offices' network: Beijing, Changchun, Changsha, Chengdu, Changzhou, Chongqing, Dalian, Fuzhou, Guangzhou, Ha'erbin, Haikou, Hangzhou, Hefei, Hohhot, Huangshi, Jilin, Jinan, Kunming, Lhasa, Nanjing, Nantong, Nanning, Nanchang, Ningbo, Qingdao, Shijiazhuang, Shanghai, Shenyang, Suzhou, Shenzhen, Taiyuan, Tianjin, Wuhan, Urumqi, Wuxi, Wenzhou, Xiamen, Xi'an, Xining, Yinchuan, Zhengzhou, Zhoushan, Zhuhai and Taipei.