

**AmCham China**  
中国美国商会

The American Chamber of Commerce in the People's Republic of China

**AmCham China White Paper | 中国美国商会年度白皮书**

2018 AMERICAN BUSINESS  
IN CHINA **美国企业在中国**

2018 AMERICAN BUSINESS  
IN CHINA WHITE PAPER  
2018 年度美国企业在中国  
白皮书

Unless otherwise indicated, all charts are from the 2018 AmCham China *Business Climate Survey*.  
若无特别说明，文中所有图表皆来自于中国美国商会2018年度商务环境调查。

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所有的人民币换算为美元都是依据2017年7.03:1的平均汇率计算的。

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华中（武汉）、东北（大连、沈阳）设有区域办公室

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# Chairman's Message

2018 is the 40th anniversary of China's famous Eleventh Third Plenum when it began the process of opening up and reforming its economy, and China now aims to be a Moderately Prosperous Country by 2020. AmCham China recognizes and applauds China's extraordinary accomplishments lifting millions out of poverty and growing its middle class. The US-China trade and investment relationship has played no small part in China's economic success. And AmCham China continues to play an important, constructive role to support a healthy and growing bilateral economic relationship based on fairness and reciprocal treatment. In that spirit we are publishing our 20th annual *White Paper*, a comprehensive analysis of China's economic policies and practices with respect to foreign trade and investment.

US and Chinese policy makers pay close attention to the *White Paper*. This year the world's two largest economies face some of their most significant bilateral challenges in the past 40 years: how to reconcile China's government funding and protection of state-owned and state-influenced enterprises versus the American model based on market forces. The *White Paper* will help both sides better understand each other as the governments work toward solutions.

AmCham China has developed its policy priorities as a positive response to common themes recurring throughout this year's *White Paper*. One priority is **Building Trust Through Clarity and Consistency**. The stability and predictability provided by an unambiguous and even-handed regulatory environment will be important for China's continued growth, by boosting confidence of private companies — both domestic and foreign — that their investments will be fairly protected under law. The gap between policy as stated and as enforced remains significant.

Another policy priority is **Promoting Development through Open Investment**. This is especially important given the increasing scrutiny of the US-China commercial relationship, and the questions being raised internationally about Chinese companies enjoying greater market access overseas compared to the access foreign-invested companies have in China.

A third priority is **Stimulating Innovation through Global Cooperation**. To realize its innovation goals, China should open its digital as well as physical doors to allow information to flow more freely. Creativity is the product of diverse ideas combined in an environment where standards are set based on broad participation and protection of intellectual property.

Finally, AmCham China members volunteer countless hours to share their experiences, build consensus with industry cohorts, draft the 40 industry and cross-cutting chapters, and painstakingly wordsmith the final product — both in English and Chinese. To these volunteers I want to express my special appreciation. I am very proud to be affiliated with them, the lifeblood of the Chamber. I'd also like to acknowledge the American Chambers in Shanghai and Southwest China, who also provided valuable insights from their members. Particular

# 主席致辞

2018 年是中国著名的“十一届三中全会”召开 40 周年，会议开启了经济改革开放的进程，而从现在到 2020 年，是中国全面建成小康社会社会的决胜期。中国美国商会（商会）认可并赞赏中国政府在脱贫攻坚、扩大中产阶级方面所取得的非凡成就。中美的贸易投资为中国经济发展做出了积极贡献。商会将继续在公平和互惠待遇的基础上，在支持健康的、不断增长的双边经济关系中，发挥重要的建设性作用。本着这种精神，商会发布了第 20 期年度《美国企业在中国白皮书》（以下全书简称《白皮书》），综合分析了关于外国贸易和投资的中国经济政策和实践。

中美两国的政策制定者一直以来密切关注着《白皮书》。今年，世界上最大的两个经济体面临着过去四十年里一些最重大的双边挑战：如何协调中国政府对国有国资企业的资助和保护，使之与基于市场力量的美国模式抗衡。鉴于中美政府均致力于实现双赢的解决方案，《白皮书》将帮助双方更好地了解彼此。

商会对今年《白皮书》反复出现的共性问题作出了积极回应并制定了相应政策重点。第一项政策重点是，**努力建立明确不变的信任**。透明的监管环境所提供的稳定性和可预测性，对中国的持续增长至关重要。商会建议通过确保国内外私营企业的投资受到法律的公平保护，以提振信心。然而，政策规定和执行之间的差距仍然很大。

另一项政策重点是，**通过开放投资促进发展**。这一点尤其重要因为中美加强了对两国经贸关系的审视，而国际上对中国企业在海外能进入的市场远多于外资企业在华的情况颇有微词。

第三项政策重点是，**通过全球合作促进创新**。为了实现创新目标，中国应该开放其数字门户和实体门户，让信息更自由地流动。制定标准应以广泛参与和知识产权保护为本，这样开放的环境才能孕育出多元化思想结合的产物—创造力。

最后，商会会员自愿花费了无数个小时分享他们的经验，与业界同仁达成共识，起草了 40 个行业和领域的章节，并精心制作了最终版本，包括英文和中文版。我想向这些志愿者表达特别的感谢。我为能与他们共事而感到自豪，因为他们是商会的命脉。另外我也向上海美国商会和西南美国商会表达感谢，在他们的帮助之下《白皮书》也包含了来自他们会员的宝贵建议。同时也特别感谢我们的政策委员会主席罗斯，今年

gratitude goes to Les Ross, chair of our Policy Committee, who again this year worked tirelessly to ensure we have the most substantive and well-written publication possible. Also thanks to Katie Beck and her team for their work over eight months to produce a *White Paper* that meets AmCham China's demanding standards.

So whether one studies this year's *White Paper* from A to V (or from Agriculture to Visa Policy), or to investigate specific topics, the 2018 AmCham China *White Paper* will once again be an important tool facilitating mutual understanding and advancing our bilateral economic relationship.

A handwritten signature in black ink, appearing to read 'W. Zarit', with a stylized, cursive script.

William Zarit

Chairman

The American Chamber of Commerce  
in the People's Republic of China

May 2018

他又一次孜孜不倦地工作，以确保我们出版的《白皮书》内容真实可靠、语言清晰通达。还要感谢白晓白和她的团队这八个月以来辛勤工作并制作出符合商会高标准要求的《白皮书》。

因此，无论是按照目录顺序通读，还是挑选议题研读，2018年《白皮书》将再次成为促进相互理解和双边经贸关系的重要工具。



蔡瑞德  
中国美国商会主席  
2018年5月





Part One:  
Business Climate Overview  
商务环境综述

# American Businesses Continue to Innovate Despite Increased Uncertainty and Complexity

## Introduction

China's economic development has progressed along a unique path as a product of historical tradition, technological context and government intervention. The result is an economy that now differs, sometimes significantly, from others in many respects. There is much to commend in adopting novel approaches to novel situations, but it is also important to recognize what is different, and what is ineffective or inefficient. It is particularly important to recognize that China's success means that it can no longer credibly defend protectionist policies on the grounds that it is still a "developing country" and that special dispensations granted when it joined the WTO are still warranted.

The US and China are strongly intertwined through trade and investment, and, for the past 40 years our commercial ties have consistently helped to maintain the bilateral relationship, despite periods of political and military tension. However, extensive market access barriers, protectionism, an opaque regulatory system, and discriminatory enforcement, among other practices, result in an uneven playing field for many US companies operating in China.

This 20th edition of the *American Business in China White Paper* explores cross-cutting, industry-specific, and regional issues faced by AmCham China's member companies in 2017 and early 2018, and offers practical recommendations for addressing these challenges that will, if implemented, benefit both foreign companies and the Chinese economy as a whole. We hope that this year's *White Paper* will serve as a constructive tool for both the Chinese and US administration in looking for ways to maintain a mutually beneficial bilateral economic relationship.

## China at Home and Abroad

### *Shifting Dynamics in the Promotion of Global Free Trade*

In 2017, China continued to expand its presence globally and sought to position itself as a champion for free trade as the Trump Administration has sought to reexamine the role of

the US in global trade on all fronts, including by adopting more protectionist approaches.

China held the Belt and Road Forum (BRF) in May 2017 in Beijing, hosting a total of 29 foreign state and government leaders and representatives from more than 130 countries as well as 70 international organizations. The BRF resulted in a joint communiqué that reiterated China's stated commitment to "free and inclusive trade and globalization." President Xi further expressed China's position at the Asia-Pacific Economic Cooperation (APEC) Leaders Meeting in Da Nang, Vietnam in November, stating that China will "stick to a path of peaceful development and promote the building of a new type of international relations based on mutual respect, fairness and justice, and win-win cooperation."

Regardless of whether, or to what extent, China puts such commitments into practice, Xi's statements contrast with the "America First" agenda that the Trump Administration has put forward and the US decisions to leave key international institutions and agreements that address global issues, such as the 2015 Paris Agreement on climate change and the Trans-Pacific Partnership. While AmCham China is encouraged by China's reaffirmed commitments to opening its markets, it remains to be seen how or if such commitments will be transformed into actionable policy items, and whether they will effectively facilitate reciprocity and the creation of a level playing field.

Going into 2018, bilateral relations between China and the US have become an increasing concern to US businesses in China. We were pleased to see continued high-level communications between US and Chinese leaders — first in April 2017 at Mar-a-Lago, then in November 2017 in Beijing — and encourage both governments to remain open to resolve problems via constructive, candid, and effective communication. However, trade tensions between the US and China, particularly those surrounding the Section 232 and 301 investigations, have raised serious concerns that such tensions will escalate into a trade war with retaliatory measures from both sides, potentially leading to a further deterioration of bilateral relations, including the commercial relationship. That the US is willing to risk these disruptions, however, does indicate how seriously it views China's cyber theft, as well as its forced technology transfer and discriminatory industrial policies.

# 不确定性和复杂性增加，美国企业创新继续

## 引言

**作** 为历史传统、技术背景和政府干预的产物，中国的经济发展沿着独特的道路前进。这导致了中国经济与其他国家的经济有诸多不同的地方。在经济发展中采用新颖的方法处理新情况非常值得赞扬，但认识到什么是不同的，什么是无效的或低效的也很重要。特别关键的是，要认识到中国的成功意味着它不能再持守保护主义政策，也不能因为中国仍然是一个“发展中国家”而继续得到在加入世贸组织时所获得的特殊豁免。

美国和中国通过贸易和投资紧密交织在一起，在过去40年里，尽管存在政治和军事紧张时期，中美的商业关系一直在为维持良好的双边关系而助力。然而，广泛的市场准入壁垒、保护主义、不透明的监管体系以及歧视性执法等做法，导致许多在华经营的美国公司遭遇了竞争环境不公平的情况。

《白皮书》第20版探讨了中国美国商会（商会）会员企业在2017年和2018年初面临的跨领域、特定行业和地区性问题，并为解决这些挑战提供了实用建议，如果这些建议得以实施，外国企业和整体中国经济将会受益。商会希望今年的《白皮书》能够成为中美两国政府寻求维护双边经济互惠关系的有助益的工具。

## 中国的内政外交

### 推动全球自由贸易

2017年，特朗普政府试图以保护主义的角度来重新审视美国在全球贸易中在各方面所扮演的角色，中国正继续扩大在全球的影响力，并努力将自己定位为自由贸易的拥护者。

中国于2017年5月在北京举办了“一带一路”国际合作高峰论坛（BRF），共有来自130多个国家和70个国际

组织的29位外国国家和政府领导人和代表出席了论坛。“一带一路”国际合作高峰论坛发表了联合公报，重申了中国对“自由包容的贸易和全球化”的承诺。习主席在11月越南岷港举行的亚太经合组织（APEC）领导人会议上，进一步表明了中国的立场，指出中国将“坚持走和平发展道路，推动建立相互尊重、公平正义、合作共赢的新型国际关系”。

无论中国是否或在多大程度上落实这些承诺，习近平主席的声明与特朗普政府提出的“美国第一”议程，以及美国作出退出解决全球性问题的关键国际机构和协议的决定均形成鲜明对比，例如2015年《巴黎协定》和《跨太平洋伙伴关系协定》。尽管商会对中国重申开放市场的承诺感到鼓舞，但是否以及如何能够将这些承诺转化为可执行的政策项目，及其是否有效促进互惠和创造公平的竞争环境，还有待观察。

进入2018年，中美双边关系已成为在华美国企业日益关注的问题。尽管商会乐于见中美两国领导人继续保持良好的高层沟通—先是于2017年4月在美国佛罗里达州海湖庄园，后于2017年11月在中国北京—并鼓励两国政府保持开放态度，通过建设性的、坦率的、有效的沟通来解决问题。中美之间的贸易紧张局势，特别是围绕232和301部分调查的贸易紧张局势引起了两国的严重担忧，认为这种紧张局势将升级为贸易战，双方都有可能采取报复措施，可能导致双边关系特别是商业上的进一步恶化。然而，美国愿意承担这样的风险表明了美国政府非常严肃地看待中国强制技术转让、网络盗窃和歧视性产业政策的行为。

### 加大国内改革力度

2017年，中国政府为改善商业环境和鼓励外商投资做出了一系列努力。2017年1月发布的“关于促进进一步开放和积极利用外资的若干措施的通知”（国发〔2017〕第5号）提出了20个方向性措施清单，旨在简化政府行政程序，并加强在华外资企业的监管环境。2017年8月

## Ramping up for Domestic Reforms

In 2017, the Chinese government made a series of efforts to improve the business environment for and encourage investment by foreign businesses. Released in January 2017, the “Circular on Several Measures to Promote Further Openness and the Active Utilization of Foreign Investment” (Guo Fa (2017) No. 5) offers a list of 20 directional measures that seek to streamline government administrative procedures and enhance the regulatory environment for foreign businesses in China. On August 16, 2017, the State Council released the Circular on Measures to Promote Foreign Investment (Guo Fa (2017) No. 39) (Circular No. 39) to enhance the business environment and facilitate the growth of foreign investment in China. It is rare for the State Council to issue two sets of policies on the same topic in the same year. The issuance of Circular No. 39 provided a wider range of policy benefits to the business community, addressed specific issues with a more detailed implementation plan, and gave the green light to local governments to focus on actively implementing policies rather than ensuring accountability. We welcome and appreciate such efforts by the Chinese government to improve the environment for foreign businesses in China. However, issues such as lack of consistency in policy implementation still persist in the daily operations of businesses in China, and perhaps require more than directional measures to address.

Another reason for foreign businesses to be cautiously optimistic is the removal of equity ownership caps in the financial sector in 2017. On November 10, following President

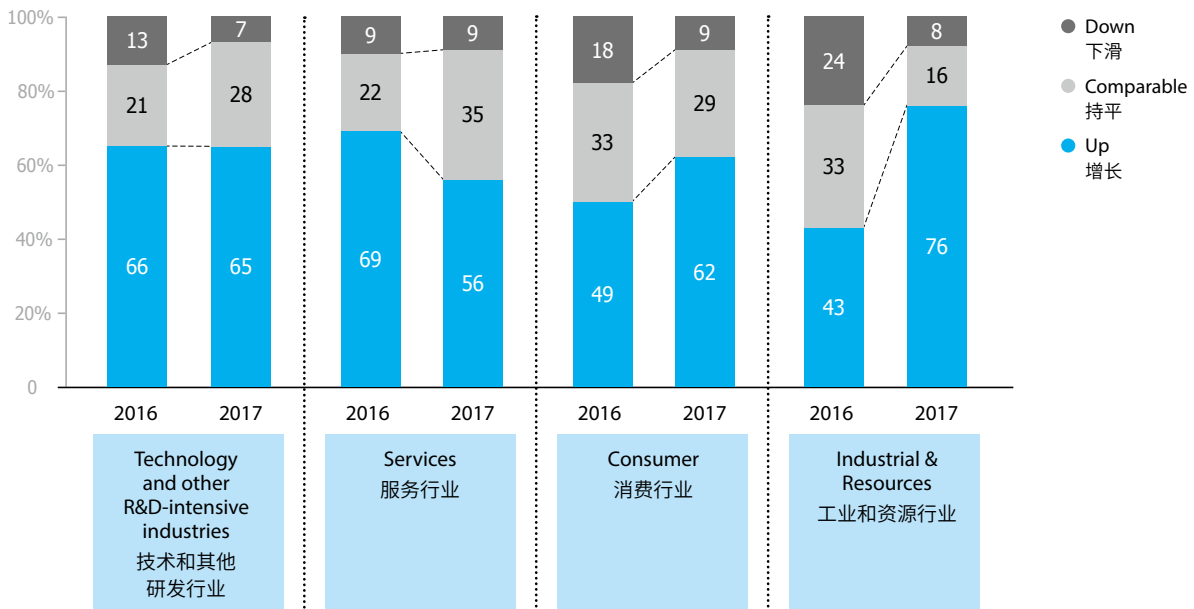
Trump’s visit to China, the Chinese government announced its decision to further open up its financial market to foreign businesses by removing equity ownership caps for foreign securities, asset management companies, commercial banks, and insurance providers. While the decision to remove equity ownership caps is a long-anticipated move that highlighted the importance of reforming the financial market and improving the US-China bilateral relationship, the key again lies in the actual implementation of these reforms, which remains to be seen. See the “Banking and Commercial Markets” chapter for more on this topic.

The Chinese government has repeatedly emphasized that 2018 marks the 40th anniversary of China’s reform and opening, stressing that significant investment reforms can be expected this year. Our members eagerly await further announcements along these lines and hope that any reforms will be swiftly implemented. More information on related issues can be found in the “Investment Policy” chapter.

The “Two Sessions” held in March 2018 rolled out a new leadership lineup for Xi’s second term as China’s President and a massive government overhaul plan that could potentially have a profound impact on foreign businesses in China. The government has focused on reducing overlapping enforcement, strengthening control, and promoting regulatory effectiveness and efficiency when designing the restructure, reducing the number of ministerial-level agencies by eight and vice ministerial-level agencies by seven, and adding seven new ministries and four administrations.

## How does the estimated 2017 revenue of your China operations compare with 2016 results?

2017年贵公司在华业务的经营收入预计与2016年相比有何变化?



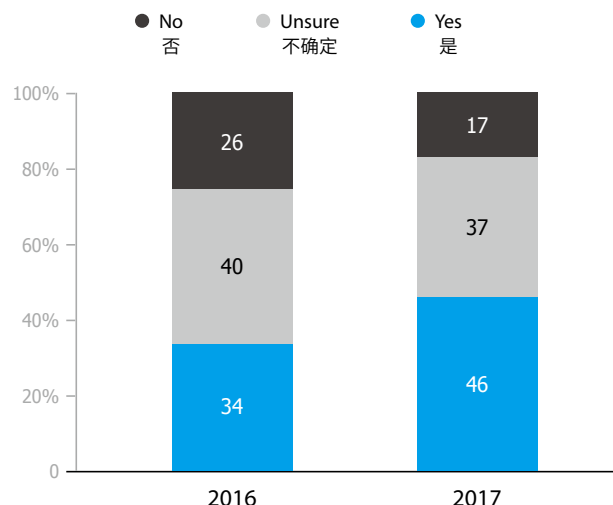
16日，国务院发布“关于促进外商投资办法的通知”（国发〔2017〕第39号）（39号文）以改善经营环境，并促进外商在华投资增长。国务院在同一年就同一议题发布两套政策的情况很少见。第39号通知的发布为企业界提供了更广泛的政策利益，通过更详细的实施计划解决了具体问题，并为地方政府重视积极执行政策而不是确保问责制开了绿灯。商会欢迎并赞赏中国政府为改善在华外资企业环境所做的努力。然而，政策实施缺乏一致性问题仍然存在于在华企业的日常运营中，可能不仅仅需要方向性措施来解决。

外国企业持谨慎乐观态度的另一个原因是，2017年取消了金融行业的股权上限。11月10日，继特朗普总统访华之后，中国政府宣布决定进一步向外资企业开放金融市场，取消外国证券、资产管理公司、商业银行和保险公司的股权上限。尽管取消股权上限的决定是一项期待已久的举措，凸显了改革金融市场和改善中美双边关系的重要性，但这些改革的落地实施，仍有待观察。有关该主题的更多信息，请参阅银行与商业市场章节。

中国政府一再强调，2018年是中国改革开放40周年，并有望在今年进行重大投资改革。商会会员急切等待进一步的公告，并希望任何改革都能迅速实施。关于相关问题，

### Are you confident that the Chinese government is committed to further opening China's market to foreign investment in the coming three years?

您是否相信中国政府在未来三年将进一步向外资开放市场？



更多信息可以参阅投资政策章节。

2018年3月举行的“两会”推出了中国国家主席习近平第二个任期的新领导班子，并出台了一项大规模的政府改革计划，该计划可能对在华外资企业产生深远影响。政府在设计重组时，重点关注减少重叠执法，加强控制，提高监管效力和效率，并减少了8个部委级机构，7个副部委级机构，增加了7个新部委和4个行政部门。随着中国正朝着缓慢稳定增长的发展阶段迈进，商会鼓励中国政府有效处理系统性风险等问题，增强整体商业环境。

### 对不确定商业环境的评估

在增长放缓，承诺改革以及不确定双边贸易关系的背景下，商会发布的2018年《商务环境调查报告》提供了一幅复杂图景：在华的美国企业继续适应日益严峻的环境。尽管强劲的全球经济有助于确保在华企业能稳定地盈利，但人们对中国作为世界第二大经济体有远远更高的期望。

在经历了数年日益悲观的前景之后，2017年各会员企业对经济增长的乐观态度和信心有所增加。近六成的公司将中国列为三大投资重点之一（较2016年有所改善，但仍低于历史平均水平）。46%的受访者相信政府将在未来三年内进一步向外资投资开放中国市场，去年这一数字是34%。另一方面，对许多公司来说，监管仍然存在，75%的会员企业仍然认为外国公司在中国不如以前受欢迎。

与前两年类似，受访者仍然认为监管解释不一致、法律和执法不明确，以及劳动力成本不断上升是他们面临的两个最大挑战。今年，监管合规风险上升为第三大挑战。尽管存在一些积极迹象，但今年的不确定性似乎有所增加。

### 投资展望：监管和执法挫败积极性

尽管存在挑战和不确定性，中国仍然在大部分会员企业的投资议程上占据重要位置。三分之一的会员计划在2018年将其在华投资扩大10%以上。

在整个经济领域，国内的中国企业不断壮大，争夺市场份额和顶尖人才。会员们担心，不平等的法规执行和国内公司的优惠待遇可能会导致国内商业竞争失衡，损害在华外资企业的业绩。而去年，会员企业担心中国的保护主义复苏。

虽然环保标准等法律的执行有益于社会，但有些受访

We encourage the Chinese government to address issues, such as systemic risks and how to enhance the overall business environment, as China moves toward a development phase with slower and steadier growth.

## Assessments of the Uncertain Business Environment

Amidst this background of slower growth, promised reforms, and an uncertain bilateral trade relationship, AmCham China's 2018 Business Climate Survey Report provided a complex picture of American business continuing to adapt to an increasingly challenging environment. A strong global economy helped ensure that profitability remained steady, although it was still below levels one would expect in the world's second largest economy.

After several years of an increasingly pessimistic outlook, optimism and confidence in growth increased among members in 2017. Nearly six in 10 companies rank China among their top three investment priorities (an improvement from 2016, but still below the historical average). Moreover, 46 percent of respondents are confident the government will further open China's market to foreign investment within the next three years, up from 34 percent last year. On the other hand, regulation remains a concern for many, and 75 percent of member companies continue to feel foreign companies are less welcome in China than they have been in the past.

Similar to the prior two years, survey respondents continued to cite inconsistent regulatory interpretation, unclear laws and enforcement, and rising labor costs as their top two challenges. This year, regulatory compliance risks rose to be the third-greatest challenge. Although there are a number of positive signs, uncertainty seems to have increased this year.

### *Investment Outlook: Regulation and Enforcement Dampen Enthusiasm*

Despite the challenges and uncertainty, China continues to loom large on the investment agenda for most member companies. One-third of members plan to expand their investment in China by more than 10 percent in 2018.

Across the economy, domestic Chinese firms are a growing force, competing for both market share and top talent. Members voiced concerns that unequal enforcement of regulations and preferential treatment of domestic companies may be tipping the competitive balance toward domestic firms, hurting their results. Last year, members were concerned about a resurgence of protectionism in China.

While the enforcement of laws like environmental standards is socially beneficial, some worry that enforcement is uneven and has become a more subtle version of protectionism, with foreign companies bearing more than their fair share. Some 46 percent of companies continue to feel foreign companies are treated

unfairly compared to local companies, with some members asserting in interviews that they are more likely to undergo tax audits or reviews of work permits or visas than local rivals.

Increased regulatory fairness, predictability, and greater transparency are the steps respondents say would have the greatest impact on their level of investment in China. Specific reforms members would like to see include greater access to officials and consistent implementation of national policies at the local level. Half of respondents said that the steps most needed to help foreign business in China are the creation of a level playing field and investment reciprocity.

Concerns remain about a "two-speed China," a business environment in which Technology and other R&D-intensive industries and Consumer sectors grow well, while other sectors find less success. In 2017, 64 percent of companies enjoyed a rise in revenue, with the strongest growth coming from the Industrial & Resources sector. More than three-quarters (76 percent) of those companies reported higher revenue in 2017, compared with 43 percent in 2016.

Technology and R&D-intensive companies are the most optimistic about market growth potential in 2018. More than three-quarters (77 percent) expect industry market growth of five percent or more. However, it is also important to note that Technology is the sector with the greatest concerns about unfair treatment of foreign companies compared with local companies, most likely to report challenges caused by domestic protectionism, and also the sector that places the highest importance on a positive bilateral relationship to ensure business growth in China.

Respondents are clear that a strong bilateral relationship between China and the US is important for business growth. One-quarter of respondents see some type of treaty between the two countries as the single most valuable step the US government could take to improving American firms' ability to operate in China.

Rising costs and changes in the regulatory environment are the prime reasons 23 percent of respondents say they have moved or plan to move capacity out of China. Nearly half of those are moving to developing Asia, and 22 percent to the US. For their part, Chinese regulators also have an opportunity, to build transparency and equity into their rules and enforcement. Those steps would improve confidence in the market and unlock increased foreign investment.

## AmCham China's 2018 Policy Priorities

While the following chapters of the White Paper provide many specific and detailed recommendations, the below priority areas are emphasized to set an overarching framework under which the more specific recommendations can be understood. We believe that any actions to address the imbalances in the US-China trade and investment relationship can be best solved by keeping these issues in mind.

## Expanded list of 2018 top challenges 2018 年商业挑战（扩展列表）

● >50%    ● 25-50%    ● <25%

1	Inconsistent regulatory interpretation and unclear laws and enforcement 法律法规执行不一致 / 不清楚	60%
2	Rising labor costs 劳动力成本增加	56%
3	Regulatory compliance risks 监管合规风险	36%
4	Shortage of qualified employees 缺乏合格的员工	32%
5	Increasing Chinese protectionism 中国保护主义不断升级	32%
6	Obtaining required licenses 获取相关许可证件困难	28%
7	Shortage of qualified management 缺少合格的管理人员	26%
8	Internet access quality and/or censorship 互联网联通质量和审查屏蔽	23%
9	Unfair or onerous taxes 不公平或繁重的税收	21%
10	Industry overcapacity 行业产能过剩	21%
11	Requirements to comply with Chinese standards or inability to participate in standards setting 要求符合中国标准 / 不能参加标准制定	21%
12	Intellectual property rights infringement 知识产权侵权	20%

者带着担心执法不均衡，成为保护主义更微妙的一种形式，使外国公司承担过多责任。约 46% 的公司仍然认为，与当地公司相比，外国公司受到了不公平待遇，一些会员企业在采访中表示，比起当地竞争对手，他们更有可能接受税务审计、工作许可或签证的审查。

受访者表示，提高监管的公平性，可预测性和更大的透明度，对其在华投资体量产生的积极的影响最大。会员企业希望看到的具体改革包括增加更多与中国政府官员沟通的渠道以及确保地方一级能全面落实和执行国家相关政策。一半的受访者表示，帮助在华外资企业最需要的措施是创造公平的竞争环境和互惠互利的投资。

人们对“双速中国”的担忧依然存在。在这种商业环境中，科技和其他研发密集型产业和消费行业的发展势头良好，而其他行业表现平平。2017 年，64% 的公司收入有所增长，来自工业和资源部门的增长最为强劲。2017 年，超过四分之三 (76%) 的公司收入有所增加，而 2016 年这一数字为 43%。

对 2018 年保持最乐观态度的是科技和研发密集型企业。超过四分之三 (77%) 的企业预计行业市场增长率达到 5% 或更多。值得注意的是，科技行业是最为关注外国公司受到与当地企业不公平待遇的。

受访者清楚地表明，中美两国之间强大的双边关系对企业增长至关重要。四分之一的受访者认为，中美两国签署相关条约是美国政府为提高美国企业在华经营能力所能采取的唯一最有价值的措施。

23% 的受访者表示已经或计划将产能迁出中国，主要原因是成本的上涨和监管环境的变化。其中近一半的企业正在转向其他亚洲发展中国家，22% 的企业正准备迁往美国。中国监管机构能做的是将透明度和公平性纳入相关法律法规和执法中。这些措施将增强市场信心，并吸引更多的外国投资。

## 政策重点

尽管《白皮书》的以下章节提供了许多具体和详细的建议，商会仍重点强调以下优先领域，以确定一个总体框架来理解更具体的建议。商会认为，通过牢记这些主题，任何解决中美贸易和投资关系不平衡的行动都可以得到最好的解决。



## Examples of Lack of Reciprocity in the Bilateral Investment Relationship

There are many examples of unfair treatment of US companies in China due to investment limits, restrictive regulations, selective enforcement, and procurement barriers. The examples listed below are certainly not exhaustive, but they illustrate the market access challenges and lack of reciprocity that contributes to the lack of a level playing field.

Industry	China	US
<b>Agriculture</b>	Foreign investment in biotech crop breeding, seed production, and commercialization is prohibited.	Foreign investment in biotechnology is permitted without an equity cap.
<b>Automotive</b>	Foreign companies must form a joint venture with a Chinese partner, foreign equity is capped at 50 percent, and the number of joint ventures per investor is capped.	Foreign investment in the automobile industry is permitted without an equity cap.
<b>Construction, Engineering, and Design</b>	Wholly foreign-owned construction enterprises are restricted to undertaking foreign-funded projects or projects with foreign investment equal to or greater than 50 percent, except for projects that cannot be undertaken by Chinese construction enterprises because of technical difficulties.	There are no funding related restrictions on the types of construction projects firms can undertake based on foreign ownership.
<b>Healthcare Services</b>	Foreign investment in medical institutions is subject to a 70 percent equity cap.	Foreign investment in medical institution is permitted without an equity cap.
<b>Information and Communications Technology</b>	Foreign participation in the provision of cloud services is subject to a 50 percent equity cap and licensing restrictions.	Foreign investment in the provision of cloud services is permitted without an equity cap.
<b>Insurance</b>	Foreign investment in life insurance is subject to a 50 percent equity cap. In late 2017, it was announced that the cap would increase to 51 percent in three years and would be removed in five years.	Foreign investment in the insurance industry is generally permitted without an equity cap, but some states impose restrictions based on government ownership.
<b>Legal Services</b>	Foreign law firms cannot hire Chinese lawyers to practice Chinese Law.	Chinese law firms can hire US lawyers and practice US law.
<b>Media and Entertainment</b>	Foreign-owned companies cannot distribute films in China without restrictions. The Chinese government schedules film release dates.	Chinese companies can distribute films in the US without restrictions and can determine their own release dates.
<b>Retail</b>	Local governments often force wholly foreign-owned retailers to set up separate legal entities in their jurisdictions, imposing increased tax and administrative burdens on these companies.	There are no common practices that create higher tax and administrative burdens on foreign retailers.
<b>Securities</b>	Foreign-invested securities broker-dealers have traditionally been subject to a 49 percent equity cap. Announcements in late 2017 provide for 51 percent ownership, to be expanded to 100 percent ownership in three years.	Foreign investment in the securities industry is permitted without an equity cap.

## 双边投资关系缺乏对等案例

由于投资限制、限制性规定、选择性执法和采购壁垒，在华美国企业受到不公平待遇的例子比比皆是。以下为其中部分案例，表明了市场准入面临的挑战和对等性的缺乏，导致了不公平竞争环境。

行业	中国	美国
农业	禁止外商投资生物技术作物育种、种子生产和商业化。	允许外商投资生物技术，没有股本上限。
汽车行业	外国企业必须与中国合作伙伴成立合资企业，外资股权上限为50%，而每名投资者的合资企业数量均有上限。	允许外商投资汽车行业，没有股权上限。
建筑、工程和设计	外商独资建筑企业限于承接外商投资项目或外商投资50%或以上的项目，但因技术困难中国建筑企业不能承担的项目除外。	根据外国所有权，企业可以承担的建筑项目类型不存在资金相关限制。
医疗服务	医疗机构的外商投资股权上限为70%。	医疗机构外商投资没有股权上限。
信息通信技术	外国参与提供云服务，将受到50%的股权上限和许可限制。	允许外商投资云服务的提供，不设股权上限。
保险	人寿保险外商投资受到50%的股权上限。2017年末，宣布该上限将在三年内上升至51%，并将在五年内取消。	一般情况下，外商投资在保险行业没有股权上限，但一些国家根据政府所有权加以限制。
法律服务	外国律师事务所不能聘请中国律师执行中国法律。	中国律师事务所可以聘请美国律师，并执行美国法律。
媒体与娱乐	外资公司在中国不能无限制地发行电影。中国政府安排电影上映日期。	中国公司可以不受限制地在美国发行电影，且可以自行决定上映日期。
零售	地方政府经常迫使外商独资零售商在其管辖范围内设立单独的法人实体，增加了这些公司的税收和行政负担。	没有给外国零售商造成更高的税收和行政负担的一般做法。
证券	传统上，外商投资证券经纪商的股权上限为49%，2017年年底公告宣布股权上限为51%，三年内将提高至100%。	证券业外商投资没有股权上限。

## 以明确性和一致性建立信任

明确的监管环境所提供的稳定性和可预测性，对于中国的持续增长至关重要。商会促请中国政府在参与制定和实施法律过程中海纳百川，来缩短立法与执法之间的可行性差距。而且，更高的透明度不仅有助于政府打击腐败，

而且也会增强国内和海外私营企业对中国商业环境的信心，并使他们的投资受到法律的公平保护。

- 不一致 / 不明确的法律和执行仍然是商会会员面临的巨大挑战。(2018 商务环境调查)
- 超过半数的会员认为，如果能够实现，监管环境的透

## *Building Trust through Clarity and Consistency*

The stability and predictability provided by an unambiguous regulatory environment will be important for China's continued growth, and we urge the Chinese government to close the effectiveness gap between legislation and its enforcement through an inclusive process for participation in the formulation and implementation of laws and regulations. Moreover, greater transparency would not only assist the government's fight against corruption, it would also boost confidence in private companies, both domestic and overseas, that their investments will be fairly protected under law.

- Inconsistent/unclear laws and enforcement are still the top challenge for AmCham China members (2018 Business Climate Survey).
- Greater transparency, predictability and fairness of the regulatory environment was cited by more than half of members as a potentially very or extremely significant driver of new investment (2018 Business Climate Survey).
- China ranks 78 out of 190 in the Ease of Doing Business index for 2016, just ahead of San Marino (The World Bank).
- In terms of regulatory quality and rule of law in the Worldwide Governance Indicators, China deteriorated between 2010 and 2015 (The World Bank).
- China ranks 80 out of 113 countries for regulatory enforcement in the 2016 Rule of Law Index, just ahead of Uzbekistan, compared with 71 out of 102 countries the previous year (World Justice Project).

To improve transparency and equal enforcement of laws and regulations, we recommend that the Chinese government do the following:

- Continue progress in providing 30-day notice and comment periods for all draft laws and regulations across the board, and preferably 60 days where needed.
- Extend the commitment to all courts to online publication of all court cases within seven working days of a ruling as required by 2016 regulations.
- Improve transparency by releasing formal findings and case histories of anti-monopoly related investigations.
- Clarify customs and tax regulations so that foreign companies can fully comply and make more informed investment decisions.
- End the use of "window guidance" and release public directives instead.
- Provide written explanations whenever administrative agencies deny or provide conditioned approvals for license applications or other approval applications, and adhere to decision deadlines provided for in relevant laws and regulations.

## *Promoting Development through Open Investment*

The benefits of open, vibrant markets extend well beyond foreign-invested enterprises. We believe government policy should help all parties in Chinese society – including consumers, farmers, and private companies. This is especially important given the increasing scrutiny of the US-China commercial relationship and the questions being raised internationally about the greater market access enjoyed by Chinese companies overseas compared to the access foreign-invested companies have in China.

- The economic and technological impact of foreign-invested companies, and the ripple effects through their supply chains and the spending of employees, averaged 33 percent of China's GDP from 2009 to 2013. (Developing China: The Remarkable Impact of Foreign Direct Investment).

And yet:

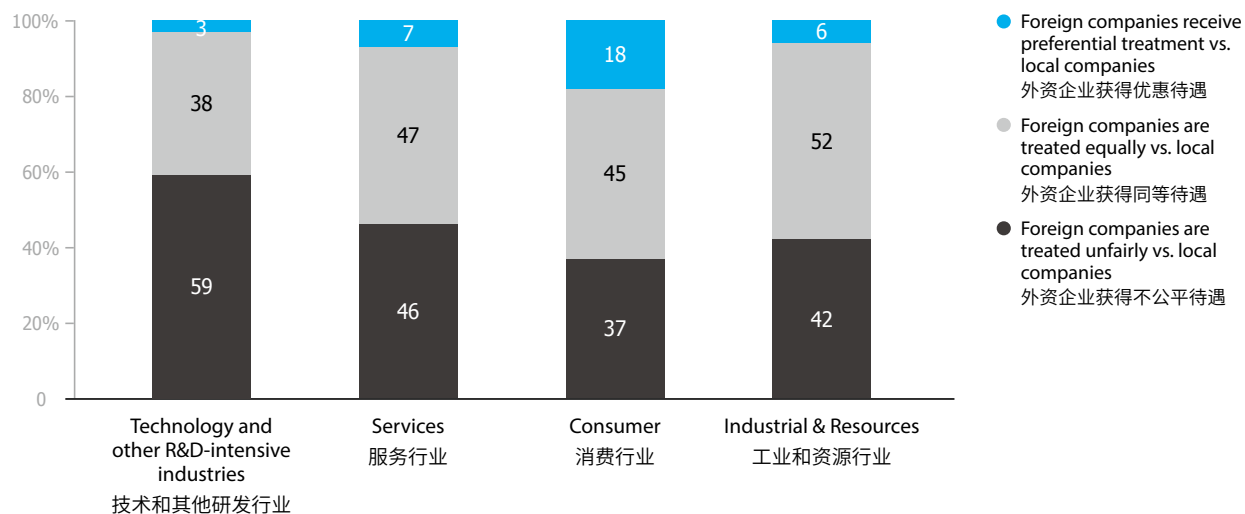
- China ranked 59 out of 62 countries in the Total FDI Restrictiveness Index in the last review in 2016, just ahead of Myanmar (Organization of Economic Cooperation and Development).
- Survey data shows a general trend of companies diversifying away from the China market (2018 Business Climate Survey).
- More companies say the investment environment is deteriorating or staying the same rather than improving (65 percent vs. 35 percent) (2018 Business Climate Survey).
- Around half of members (46 percent) believe foreign companies are treated unfairly; 75 percent feel less welcome than before (2018 Business Climate Survey).

To improve the investment environment, we recommend that the Chinese government do the following:

- Implement market opening in more sectors to achieve a more balanced investment relationship. If Chinese businesses can make an investment in the US, American companies should be able to make the same investment in China without equity caps.
- Ensure that national security reviews and "secure and controllable" technology requirements are narrowly applied and are not used for economic protectionism or to implement industrial policy.
- Actively work with the US to negotiate a robust US-China BIT with a short negative list, narrowly crafted exceptions, and text that ensures the full benefits of the treaty can be effectively reached within China's unique market.
- Make bold reforms in PFTZs and implement successful reforms nationwide on an expedited basis.

## How are foreign companies in your industry treated by government policies and enforcement relative to local companies?

您所在行业的外资企业在政府政策和执法方面的待遇与本地企业相比如何？



透明度、可预见性和公平性将是潜在的新投资非常重要或极为重要的推动力。(2018 商务环境调查)

- 2016 年“经营环境指数”排名中，中国在 190 个国家中排名第 78 位，略高于圣马力诺。(世界银行)
- 在全球治理指标的监管质量和法治方面，中国在 2010 年至 2015 年期间有所下降。(世界银行)
- 在 2016 年的法治指数中，中国的监管执行在 113 个国家中排名第 80 位，略高于乌兹别克斯坦，而前一年则中国在 102 个国家中排名第 71。(世界正义项目)

为了提高法律法规的透明度和平等执行，商会建议中国政府：

- 继续对所有法律法规草案提供 30 天的通知期和评论期，并视需要延长至 60 天。
- 根据 2016 年法规的要求，在裁决后 7 个工作日内，将所有法庭案件在网络公布的承诺扩展到所有法院。
- 通过发布有关反垄断调查的正式调查结果和案例，来提高透明度。
- 明确海关和税务条例，使外国公司能够完全遵守并作出更明智的投资决策。

- 停止使用“窗口指导”，发布公共指示。
- 行政机构拒绝或批准许可申请或及批准其他有条件性申请时，需提供书面解释，并遵守相关法律和法规所规定的决定期限。

### 通过开放投资促进发展

开放、活跃市场所带来的好处不仅仅针对外商投资企业。商会认为，政府所制定的政策应该为中国社会各方提供帮助——包括消费者、农民和私营企业。这一点尤其重要，因为中美商业关系会受到越来越多的审视，而国际上对中国企业在海外能进入的市场远多于外资企业在华的情况颇有微词。

- 外商投资企业的经济和技术影响，以及其供应链和员工支出产生的连锁反应，从 2009 年至 2013 年平均占中国 GDP 的 33%。(《发展中中国：外商直接投资的显著影响》)

然而：

- 在 2016 年最近一次审查中，中国的总体外商直接投资限制指数在 62 个国家中排名第 59 位，仅略高于缅甸。(经济合作与发展组织)
- 调查数据显示，目前在华外资企业的总体趋势是从注

- Ensure equal participation for foreign and domestic firms in the “Made in China 2025” initiative and take measures to ensure that the initiative focuses on high-quality innovation and does not cause market-distorting overcapacity in its target industries.
- Allow foreign companies to participate on an equal footing with domestic competitors when bidding for government procurement contracts.

*messages of the White Paper in accordance with the new government structure.*

### ***Stimulating Innovation through Global Cooperation***

To realize its innovation goals, China will need to strengthen its infrastructure and open its institutions to allow information to flow more freely. Creativity is the product of diverse ideas combined in an environment where standards are set with broad participation and intellectual property is protected from theft. We believe the rapid pace of innovation exceeds the ability of any single government to manage, meaning that technology regulation requires public-private engagement across borders.

- Innovation is a top three priority for half (49 percent) of our members (2018 Business Climate Survey).
- Lack of sufficient IP protection, increased restrictiveness of data security-related policies, standards-related restrictions, and the increased restrictiveness in localization policies are all cited by members as barriers to increasing innovation in China (2018 Business Climate Survey).
- After strong improvements at the end of the last decade, the standard of intellectual property rights protection in China has stagnated (The International Property Rights Index 2016).

We recommend that the Chinese government:

- Develop a comprehensive trade secrets law.
- Continue the successful development of intellectual property courts and limit administrative enforcement in patent disputes.
- Open all standards development technical committees to FIEs so that they can participate on an equal basis with domestic companies.
- Promote the Internet as a platform for global interaction and limit restrictions on cross-border data flows such as those proposed in the Cybersecurity Law to encourage international collaboration and innovation.

*China rolled out a plan to streamline its central government structure during the 2018 Two Sessions and efforts to complete this overhaul remained ongoing throughout the drafting process of this year’s White Paper. Therefore, some chapters may refer to government departments that are now obsolete. AmCham China will closely follow the restructuring efforts and look forward to delivering the*

重于中国市场逐渐转向多元化的市场分布。(2018 商务环境调查)

- 更多公司表示投资环境正在恶化 (65%) 或保持不变 (35%)，而没有得到改善。(2018 商务环境调查)
- 大约一半的会员 (46%) 认为外国公司受到不公平待遇；而 75% 的会员认为受欢迎程度不如以前。(2018 商务环境调查)

为了改善投资环境，商会建议中国政府：

- 在更多行业实施市场开放，实现更加平衡的投资关系。如果中国企业能够在美国投资，美国公司也应该能够在没有股权上限的情况下在中国进行同样的投资。
- 确保国家安全审查和“安全可控”技术要求得到正确和有限地应用，而不是出于经济保护主义或实施产业政策的目的。
- 积极地与美国协商和制定一个强大的中美双边贸易协定，精简负面清单，精确定义各种例外情况，同时把协定中的条款以最大程度在国内市场落实到位。
- 在自贸区内进行大胆改革，加快推进全国范围内改革的成功。
- 确保国内外公司平等参与“中国制造 2025”倡议，并采取相关措施，确保该倡议专注于高质量创新且不会造成目标行业市场扭曲的产能过剩。
- 允许外国公司在竞标政府采购合同时，与国内竞争者平等参与。

## 通过全球合作促进创新

为了实现创新目标，中国需要加强基础设施建设，开放机构，让信息更加自由地流动。创造力是在广泛参与制定标准并保护知识产权免受盗窃的环境下，将不同的想法结合起来的产物。商会认为创新的快速步伐超出了任何单一政府的管理能力，这意味着技术监管需要跨国界的公私合作。

- 创新是近半数 (49%) 商会会员的三大优先事项之一。(2018 商务环境调查)
- 会员企业认为，阻碍在华创新的因素有：知识产权保护的缺乏，数据安全相关政策和标准规定的局限性的增加以及本土化政策的抵触情绪的上涨。(2018 商务环境调查)

- 经过过去十年年末有效改善，中国的知识产权保护标准出现了停滞。(国际产权指数 2016)

商会建议中国政府：

- 制定全面的商业机密法。
- 继续发展知识产权法庭，限制专利纠纷的行政执法。
- 向外资企业开放所有标准制定技术委员会，使其能够与国内公司平等参与。
- 促进互联网作为全球互动平台，并减少对跨境数据流的限制，如在《网络安全法》中建议的一样，政府应鼓励国际合作和创新。

中国政府在 2018 年两会期间推出了党和国家机构调整方案，在今年《白皮书》起草过程中，完成这项改革的努力仍在进行中。因此，有些章节中提到的部分政府部门现已重组或不再保留。商会将会密切关注最新进展，并将尽力紧跟形势发展，在《白皮书》中提供最更新的信息。

## 2018 *White Paper* Recommendation Scorecard

The Recommendation Scorecard is an important tool that helps AmCham China track the progress made each year in its top areas of concern. The following table is an index of the priority recommendations from each of the 2017 and 2018 AmCham China *White Paper* chapters.

The progress rating indicates AmCham China members' perception of the level of progress – either high, moderate, or low – achieved by relevant government officials in addressing the priority challenge designated in each chapter of the 2017 *White Paper*. The final column indicates each chapter's priority recommendation for 2018.

Chapter	2017 Recommendation	Progress Rating	2018 Recommendation
<b>Agriculture</b>			
<i>Chinese Government</i>	Improve the sustainability and competitiveness of Chinese agriculture by opening up the industry to foreign investment in seed technology, modern agricultural processing, and bulk transportation.	Moderate Progress	Improve the sustainability and competitiveness of Chinese agriculture by opening the industry up to foreign investment in seed technology, modern agricultural processing, and bulk transportation.
<i>US Government</i>	Work with Chinese officials through bilateral dialogues, including the Joint Commission on Commerce and Trade, Strategic and Economic Dialogue, and US-China bilateral investment treaty negotiations to address the investment restrictions faced by US agriculture producers.	Low Progress	Work with Chinese officials through any official or unofficial bilateral dialogues to address trade and investment restrictions faced by US agricultural producers.
<b>Automotive Policy</b>			
<i>Chinese Government</i>	Give enterprises more opportunities to participate in discussions and submit opinions at the early policy drafting stages, so that policies and standards can better meet market needs and facilitate the healthy development of the market and the industry.	Low Progress	Give enterprises more opportunities to participate in discussions and submit opinions at the early policy drafting stages, so that policies and standards can meet market needs better and facilitate the development of the market and the industry.
<b>Banking and Capital Markets</b>			
<i>Chinese Government</i>			
• <i>Bonds Market</i>	Continue to reinforce supervision and regulate development of market intermediaries so as to better protect the interests of investors.	High Progress	Further align market practices to global standards and establish a corporate trustee structure to further protect investors.
• <i>Commercial Banking</i>	Remove all kinds of quotas in the banking sector, including on foreign debt.	Moderate Progress	Accelerate market opening to allow foreign banks' greater participation.
• <i>Credit Rating</i>	Remove or ease foreign ownership restrictions on foreign-affiliated CRAs.	High Progress	Implement CRA opening up across markets and products.
• <i>Securities</i>	Continue to liberalize the securities sector, with the priority on removing the foreign ownership cap on broker-dealers.	Moderate Progress	Eliminate ownership cap for securities JVs with further consideration of securities JVs business scope expansion, JV partner qualification, foreign investor qualification, and offshore infrastructure leverage.
• <i>Custodian Service</i>	N/A	N/A	Remove restriction and allow subcontract (or "fen bao") or subcontract in disguised form (or "zhuan bao") for foreign fund administrators to provide QDLP service. Eliminate the CSRC Administrative Measures and allow foreign branches to provide full scope of custody services.
• <i>RMB Internationalization</i>	N/A	N/A	Improve policy communication to help guide market expectations; promote use of RMB in cross-border investment and trade, particularly in Belt and Road projects.

## 2018年《白皮书》主要建议一览表

此主要建议一览表帮助中国美国商会追踪重点关注领域的年度发展进程。下表列出了商会2017年及2018年《白皮书》各章节提出的主要建议。

相关政府官员积极应对2017年《白皮书》各章节所提及的挑战，并取得一定进展，进展评分正是表明了会员企业对政府相关改革进展的评价——进展明显、有所进展或进展缓慢。最后一栏列出2018年《白皮书》各章节的主要建议。

章节	2017年白皮书主要建议汇总	进展评价	2018年白皮书主要建议汇总
<b>农业</b>			
中国政府	允许外资投资种子技术、现代农业加工和粮食散货运输，从而提高中国农业的可持续性和竞争力。	有所进展	允许外资投资种子技术、现代农业加工和粮食散货运输，从而提高中国农业的可持续性和竞争力。
美国政府	通过中美商贸联委会、中美战略经济对话和中美双边投资协定谈判等双边对话平台与中方官员合作，解决美国农业企业所面临的投资限制。	进展缓慢	通过官方和非官方两种双边对话平台与中方官员合作，解决美国农业企业所面临的贸易和投资限制。
<b>汽车制造业</b>			
中国政府	政策制订和起草的早期阶段，给予企业更多参与讨论、反馈意见的机会，让政策、标准更符合市场需求，更有利于市场和行业的健康发展。	进展缓慢	政策制订和起草的早期阶段，给予企业更多参与讨论、反馈意见的机会，让政策、标准更符合市场需求，更有利于市场和行业的健康发展。
<b>银行和资本市场</b>			
中国政府			
• 债券市场	继续加强监管，规范市场中介机构的发展，以便更好地保护投资者的利益。	进展明显	进一步调整市场惯例使之符合全球标准，建立公司受托人结构以进一步保护投资者。
• 商业银行	取消银行业的所有额度限制，包括外债额度。	有所进展	加快市场开放，让外资银行更多参与。允许外资银行建立基于风险，而非基于产品的信息技术体系。
• 信用评级	取消或放宽对外商投资信用评级机构所有权的比例限制。	进展明显	在市场和产品上实施信用评级机构开放。根据国际共识和最佳实践，采用新的或者经过修订的针对信用评级行业发展的规定。
• 证券	继续开放证券行业，重点是取消证券经纪公司的外资持股比例限制。	有所进展	进一步考虑证券合资企业的业务范围扩张，合资伙伴资格，外国投资者资格以及境外基础设施杠杆等，取消证券合资企业的所有权上限。
• 托管服务	N/A	N/A	允许基金行政服务管理人分包或转包；在现行体系，基础设施和运营模式下继续开展QDLP基金行政管理服务。修改中国银监会第12号通知和中国证监会“证券投资基金托管业务管理办法”，允许外资分行提供全面的托管服务。
• 人民币国际化	N/A	N/A	加强政策沟通来引导市场预期；在跨境投资和贸易中，尤其在一带一路项目中推广使用人民币。



Chapter	2017 Recommendation	Progress Rating	2018 Recommendation
<b>Chengdu (Southwest China)</b>			
<i>Sichuan and Chengdu Governments</i>	Avoid discriminating against otherwise qualified FIEs when bidding on government projects.	No Rating Provided	Enhance transparency in financial services, including a reliable credit rating system.
<b>Chongqing (Southwest China)</b>			
<i>Chongqing Government</i>	Enforce the accurate reporting of the social insurance base but reduce the percentage of the employee's salary that a company is required to contribute to social insurance in order to be fair to all companies.	Low Progress	Enhance transparency in financial services, including a reliable credit rating system.
<b>Civil Aviation</b>			
<i>Chinese Government</i>	Adopt an ATFM framework that incorporates a SWIM system and CDM among air traffic control, airlines, and airport authorities to enable growth and efficiency and manage and alleviate delays.	No Rating Provided	Adopt a national ATFM framework that incorporates a SWIM system and CDM procedures for air traffic control, airline, and airport experts to enable growth and efficiency through enhanced system management that also alleviates delays.
<b>Civil Society</b>			
<i>Chinese Government</i>	Clarify ambiguous language in the Overseas NGO Law related to scope of activities requiring registration, geographic scope, and other concerns. [MPS, NPC]	Moderate Progress	Update and expand the list of PSUs and provide clear procedures and better incentives for government entities to act as PSUs. [MPS, State Council, NPC]
<i>US Government</i>	Continue to reiterate deep and abiding concerns regarding the Overseas NGO Law in exchanges with relevant government stakeholders in China. [US Department of State]	Moderate Progress	Continue to reiterate strong and abiding concerns regarding the Overseas NGO Law in exchanges with relevant government stakeholders in China. [US Department of State]
<b>Competition Law</b>			
<i>Chinese Government</i>	Issue formal guidelines confirming that foreign-qualified lawyers (i.e., PRC-qualified lawyers working in foreign law firms) and foreign counsel will be allowed to attend meetings and investigations of all three agencies, alongside local counsel, to implement China's JCCT commitment.	Low Progress	Issue formal guidelines confirming that foreign-qualified lawyers (i.e., PRC-qualified lawyers working in foreign law firms) and foreign counsel are allowed to attend meetings and investigations of all three agencies, alongside local counsel, to implement China's JCCT commitment.
<b>Compliance</b>			
<i>Chinese Government</i>	Provide a clear definition of commercial bribery and further detail on the liability of companies for employee conduct in final version of the revised AUCL.	Low Progress	Provide clear definitions and explanations of legal requirements that directly impact compliance. For example, clear definitions in the final version of the AUCL regarding commercial bribery and companies' liability for their employees' behavior will assist companies with developing and enforcing robust and practical programs for commercial bribery compliance.
<i>US Government</i>	Engage in bilateral dialogue, workshops, and in-depth scientific exchanges to support the implementation of transparent and predictable regulatory systems, and a common understanding of compliance tools and objectives.	Low Progress	Engage in bilateral dialogue in-depth exchanges to support the implementation of transparent and predictable regulatory systems, and a common understanding of compliance tools and objectives.
<b>Cosmetics</b>			
<i>Chinese Government</i>	Promulgate the "Cosmetic Supervision and Administration Rule" after soliciting the opinions of all relevant stakeholders.	Moderate Progress	Promulgate the "Cosmetics Supervision and Administration Rule" after soliciting the opinions of all relevant stakeholders.
<b>Customs and Trade</b>			
<i>Chinese Government</i>	Comprehensively push forward the reform of integrated customs clearance and continue to promote trade facilitation.	High Progress	Remove or improve the stated time limits for preliminary adjudication.

章节	2017年白皮书主要建议汇总	进展评价	2018年白皮书主要建议汇总
<b>成都（中国西南）</b>			
四川省和成都市政府	政府项目招标避免歧视合格的外资企业。	未提供评价	提高金融服务的透明度，包括可靠的信用评级体系。
<b>重庆（中国西南）</b>			
重庆市政府	要求准确报告社会保险基数，调低企业缴纳社会保险适用的员工工资比例，确保所有企业的公平待遇。	进展缓慢	提高金融服务的透明度，包括可靠的信用评级体系。
<b>民用航空</b>			
中国政府	利用空中交通流量管理（ATFM）框架，使广域信息管理系统（SWIM）和空管部门、航空公司、机场当局间的协同决策机制（CDM）相结合，以提高容效，减少航班延误。	未提供评价	启用全国空中交通流量管理框架，包括关于空中交通控制、航空公司和机场专家的全系统信息管理体系和协同决策体系，通过减少延误的强化系统管理来促进增长和提高效率。
<b>企业可持续性和非政府组织参与</b>			
中国政府	明确《境外非政府组织法》中需进行登记的“活动”范围、地域和其他方面的表述。[公安部、全国人民代表大会]	有所进展	更新 / 扩大业务主管单位名录，同时为担任业务主管单位的相关政府机构制定明确的程序及设立更好的激励措施。[公安部、国务院、全国人民代表大会]
美国政府	在与中国政府相关方进行交流时，继续重申对《境外非政府组织法》的深度长久关切。[美国国务院]	有所进展	在与中国政府相关方进行交流时，继续重申对《境外非政府组织法》的深度长久关切。[美国国务院]
<b>竞争法规</b>			
中国政府	兑现中国在美中商贸联委会上做出的承诺，发布明文规定，明确允许合格的外国律师（包括在外资律所工作的合格的中国律师）和法律顾问与本地法律顾问一同出席和参与三部委的会议和调查。	进展缓慢	兑现中国在美中商贸联委会上做出的承诺，发布明文规定，明确允许合格的外国律师（包括在外资律所工作的合格的中国律师）和法律顾问与本地法律顾问一同出席和参与三部委的会议和调查。
<b>合规</b>			
中国政府	提供对直接影响合规的法律要求的明确定义和解释。例如，在《反不正当竞争法》最终修订版本中明确定义商业贿赂，详细说明公司对员工行为承担的责任，将有助于公司制定和执行强有力的、实用的商业贿赂合规计划。	进展缓慢	提供对直接影响合规的法律要求的明确定义和解释。例如，在《反不正当竞争法》最终修订版本中明确定义商业贿赂，详细说明公司对员工行为承担的责任，将有助于公司制定和执行强有力的、实用使用的商业贿赂合规计划。
美国政府	参与双边对话与研讨会，深入开展科学交流，为实施透明且可预测的监管制度提供支持，针对合规工具和目标达成共同理解。	进展缓慢	参与双边对话，深入开展交流，为实施透明且可预测的监管制度提供支持，针对合规工具和目标达成共同理解。
<b>化妆品</b>			
中国政府	在听取各方意见的基础上，尽快出台《化妆品监督管理条例》。	有所进展	在广泛听取各方意见的基础上，尽快出台《化妆品监督管理条例》。
<b>关税和贸易</b>			
中国政府	全面推进通关一体化，推动贸易便利化。	进展明显	删除或改进预判决的规定时限。

Chapter	2017 Recommendation	Progress Rating	2018 Recommendation
<b>Direct Sales</b>			
<i>Chinese Government</i>	Review and revise the Direct Sales Regulation, relaxing restrictions on compensation for direct sales agents and allowing compensation based on the aggregate volume of the sales team under a direct sale agent, provided that it is based on sales volume and not on number of sales agents recruited.	Low Progress	Revise the Direct Sales Regulation as soon as possible, by relaxing restrictions on compensation for direct sales agents and allowing compensation to be based on the aggregate volume of the sales team under a direct sales agent, provided it is based on sales volume and not on the number of sales agents recruited. [MOFCOM, SAIC, and the State Council]
<b>Express Delivery Services</b>			
<i>Chinese Government</i>	At the national level, establish a uniform security regulation mechanism for the express delivery industry, clarify regulatory bodies, and standardize regulatory measures across the country.	Moderate Progress	Establish a uniform security regulation framework at the national level for the express delivery industry, clarify regulatory bodies, and standardize regulatory measures across the country.
<b>Food and Beverage</b>			
<i>Chinese Government</i>	Continue to strengthen the development of testing organs, the professionalism of law enforcement officials, and the standardization of law enforcement in order to ensure the uniform and accurate interpretation and implementation of regulations nationwide. Additionally, establish a public channel and mechanism for communication between enterprises and legislative bodies and provide timely interpretations on the implementation of relevant legislation.	Moderate Progress	Make good use of the industry association or chamber platform to create more public-private partnerships or bilateral communication channels to develop and implement regulations and standards, so as to adopt the best international practices and advanced technologies from non-governmental stakeholders.
<i>US Government</i>	N/A	N/A	Enhance communication between corresponding US government agencies, industry associations and US enterprises operating in China, and organize more seminars involving various stakeholders on international experience and best practices for the Chinese government.
<b>Government Procurement</b>			
<i>Chinese Government</i>	Focus on addressing the remaining gaps in China's fifth revised GPA offer as identified in this chapter and accelerate negotiations toward accession to the GPA in 2017. [MOFCOM, MOF, SASAC]	Low Progress	Focus on addressing the remaining gaps in China's fifth revised GPA offer as identified above and accelerate negotiations toward accession to the GPA in 2018. [MOFCOM, MOF, State-Owned Assets Supervision and Administration Commission]
<b>Healthcare Services, Pharmaceuticals, and Medical Devices</b>			
<i>Chinese Government</i>			
<ul style="list-style-type: none"> <li>Healthcare Services</li> </ul>	Reduce taxes for private hospitals and allow chain hospitals to consolidate tax reporting of mature and new facilities.	Low Progress	Set a preferential tax rate for foreign-invested medical institutions and allow management companies to consolidate the accounts of their medical centers for tax reporting purposes.
<ul style="list-style-type: none"> <li>Pharmaceuticals</li> </ul>	Adopt a quality-oriented drug tendering and procurement model by developing a comprehensive multi-criteria evaluation in the "two envelope" system, setting up tiered drug quality categories, establishing open and transparent tendering rules, allowing at least two winners per bidding group in the national tendering model, and giving hospitals discretion to procure newly approved medicines.	Low Progress	Imported drugs, like domestic drugs, should be classified according to their level of innovation.
<ul style="list-style-type: none"> <li>Medical Devices</li> </ul>	Allow separate charging for products and medical services with advantages in safety, efficacy, and effectiveness in the pricing items to ensure patients' right of choice. [NHFP, NDRC]	Low Progress	Further adjust the current tender-bid procurement model at all levels to ensure patients' access to high-quality drugs through fair competition among all quality and efficacy qualified drugs.

章节	2017年白皮书主要建议汇总	进展评价	2018年白皮书主要建议汇总
<b>直 销</b>			
中国政府	尽快修订《直销管理条例》，放宽直销员计酬限制，允许以直销员下属销售团队的销售总量为依据计酬，但不能以招募的人员数量为依据计酬。	进展缓慢	尽快修订《直销管理条例》，放宽直销员计酬限制，允许以直销员下属销售团队的销售总量为依据计酬，但不能以招募的人员数量为依据计酬。[商务部、国家市场监督管理总局、国务院]
<b>快递服务</b>			
中国政府	期待在国家层面建立快递行业安全监管统一领导机制，明确监管主体，统一全国监管措施。	有所进展	期待在国家层面加快建立快递行业安全监管统一领导框架，明确监管主体，统一全国监管措施。
<b>食品饮料</b>			
中国政府	不断加强检测机构和执法队伍建设，提高执法人员专业水平，持续推进“清单式”标准化执法，以加强各地法规的统一、准确解读与执行，并继续呼吁建立企业与立法部门沟通的公开渠道和机制，对于企业遇到的法规解读和执行层面的问题给予及时回应。	有所进展	在政策及标准制定过程中充分利用商协会平台，创建公私合作项目或定期交流机制，鼓励国际先进经验及技术的分享。
美国政府	N/A	N/A	加强美国政府相关主管部门、行业协会等与在华美企的交流，针对中国政府亟需了解的国际经验、最佳实践等，增加由各方参与的研讨机会。
<b>政府采购</b>			
中国政府	重点缩小本章所讨论的中国第五份《政府采购协定》出价清单中仍然存在的差距，加快加入协议的谈判进程，力争于2016年加入《政府采购协定》。[商务部、财政部、国资委]	进展缓慢	重点缩小以上所讨论的中国第五份《政府采购协定》出价清单中仍然存在的差距，加快加入协议的谈判进程，力争于2018年加入《政府采购协定》。[商务部、财政部、国资委]
<b>医疗卫生服务、药品和医疗器械</b>			
中国政府			
• 医疗服务	降低私立医院税费，允许连锁医院对新老医疗机构合并报税。	进展缓慢	为外资医疗机构设定优惠税率，并允许管理公司合并医疗中心的帐户用于报税。
• 药品	采用质量导向的招标采购模式，改进“双信封”制度，建立包括多标准的全面评估招标制度，实施质量分层，建立公开透明的招标规则，在全国性招投标程序中允许每个竞价组决出至少两家入围方，允许医院自主采购新批准上市的药品。	进展缓慢	建议将进口药品同国产药品一样，按照创新程度进行分类。
• 医疗器械	允许具有安全、功效和有效性优势的产品和医疗服务单独定价计费，保障患者的选择权。[国家卫计委、国家发改委]	进展缓慢	进一步调整当前各级招标采购模式，以确保患者通过所有质量和疗效合格的药品的公平竞争获得高质量药物。

Chapter	2017 Recommendation	Progress Rating	2018 Recommendation
<b>High-Tech Trade Promotion and Export Controls</b>			
<i>Chinese Government</i>	Conduct greater outreach to Chinese companies to promote the implementation of compliance programs and transparency as a way to obtain US high-tech strategic items.	<b>Low Progress</b>	Conduct greater outreach to Chinese companies to promote the implementation of compliance programs and transparency as a way to obtain US high-tech strategic items.
<i>US Government</i>	Support high-tech trade promotion initiatives in the US and China by providing funding, speakers, and support from the relevant policy makers and agency officials.	<b>Moderate Progress</b>	Support high-tech trade promotion initiatives in the US and China by providing funding, speakers, and support from the relevant policy makers and agency officials.
<b>Human Resources</b>			
<i>Chinese Government</i>	Explore more innovative approaches to Disability Fund contributions, such as allowing enterprises to use funds from the Disability Fund to support charitable initiatives that would help educate and equip disabled people with employable skills.	<b>Low Progress</b>	Explore more innovative approaches to Disability Fund contributions, such as allowing enterprises to use funds from the Disability Fund to support charitable initiatives that will help educate and equip disabled people with employable skills.
<b>Information and Communications Technology and Cybersecurity</b>			
<i>Chinese Government</i>	Clarify the data localization requirement of the new Cybersecurity Law, so as to restrict its application to a relatively small number of "operators of CIL." Ensure that "security review" procedures of the same law, as required for cross-border transfers of critical data and personal information, do not require the disclosure or transfer of private or proprietary information.	<b>High Progress</b>	The implementing rules and regulations for the Cybersecurity Law should not go beyond the scope of the Law, as stated within its original text.
<i>US Government</i>	N/A	<b>N/A</b>	Promote cooperation with Chinese agencies in international forums for standard setting and encourage the adoption of international standards in China.
<b>Insurance</b>			
<i>Chinese Government</i>	Lift the 50 percent cap on foreign ownership of life insurers.	<b>Moderate Progress</b>	Remove all foreign ownership caps on Insurance companies and intermediaries.
<b>Intellectual Property Rights</b>			
<i>Chinese Government</i>	Make the filing of a trademark in bad faith a clear basis for invalidating trademarks filed by third parties and make it available regardless of how well known the pirated mark is.	<b>Moderate Progress</b>	Make the filing of a trademark in bad faith a clear basis for invalidating trademarks filed by third parties, regardless of how well-known the pirated mark is.
<i>US Government</i>	Share best practices from US federal and state trade secrets laws and national trade secrets strategy.	<b>Moderate Progress</b>	Share best practices from US federal and state trade secrets laws and national trade secrets strategy.
<b>Investment Policy</b>			
<i>Chinese Government</i>	Take concrete steps to give American investors in China the same levels of market access, legal protections, and non-discriminatory treatment that Chinese investors benefit from in the US today.	<b>Low Progress</b>	Work to ensure minimal disruption to the operation of market forces when promoting industrial policy goals, and eliminating all direct and indirect forms of discrimination against foreign investors in industrial policies and the tools used to implement them.
<i>US Government</i>	Pursue the timely completion of a high-standard BIT that ensures American companies can enjoy the intended benefits of the treaty within China's unique market and that Chinese companies can contribute positively to the US economy.	<b>Low Progress</b>	N/A

章节	2017年白皮书主要建议汇总	进展评价	2018年白皮书主要建议汇总
<b>高科技贸易促进和进口管制</b>			
中国政府	加强与中国企业的沟通，从而促进企业合规计划的实施和提高透明度，藉此获得美国的高科技战略产品。	进展缓慢	加强与中国企业的沟通，从而促进企业合规计划的实施和提高透明度，藉此获得美国的高科技战略产品。
美国政府	通过提供资金、发言人，并由相关政策制定部门和机构的官员给予支持，从而推进美中高科技贸易的倡议。	有所进展	通过提供资金、发言人，并由相关政策制定部门和机构的官员给予支持，从而推进美中高科技贸易的倡议。
<b>人力资源</b>			
中国政府	探索更有创新性的方法，例如，允许企业使用保障金的资金支持慈善事业，用以向残疾人提供就业技能教育和培训。	进展缓慢	探索更多创新的残疾人就业保障金征收方法，例如允许企业使用保障金的资金来支持慈善倡议，以帮助教育残疾人并使其接受就业技能培训。
<b>信息和通讯技术以及网络安全</b>			
中国政府	明确新的《网络安全法》关于数据本地化的要求仅适用于相对少数的“关键信息基础设施运营商”。确保该法关于关键数据和个人信息跨境传输需要接受的“安全审查”程序并不要求披露或转让保密或专有信息。	进展明显	《网络安全法》的实施规则不应超出原始案文中表述的范围。
美国政府	N/A	N/A	促进与中国机构在国际标准设定论坛上的合作，鼓励在中国采用国际标准。
<b>保险</b>			
中国政府	取消寿险公司外资股东持股比例不得超过50%的上限规定。	有所进展	取消所有外资股东在寿险公司及其附属机构中持股的上限规定。
<b>知识产权</b>			
中国政府	将恶意抢注商标作为判定第三方申请商标无效的明确依据，无论被剽窃商标的知名度如何，都应以此为依据。	有所进展	将恶意抢注商标作为判定第三方申请商标无效的明确依据，无论被剽窃商标的知名度如何，都应以此为依据。
美国政府	分享美国联邦和各州有关商业秘密法律以及美国国家商业秘密战略方面的最佳实践。	有所进展	分享美国联邦和各州有关商业秘密法律以及美国国家商业秘密战略方面的最佳实践。
<b>投资政策</b>			
中国政府	采取切实举措进一步向在美国的中国投资者提供市场准入、法律保护和非歧视待遇，使其和在美国的中国投资者享受的待遇相同。	进展缓慢	努力确保在促进其产业政策目标的同时，尽量减少对市场运行的影响，并消除针对外国投资者在产业政策和实施手段上所有直接和间接形式的区别对待。
美国政府	争取及时达成一个高标准的双边投资协定，确保美国企业在中国这个独一无二的市场能够实现预期的利好，并且保证中国企业能够为美国经济做出积极贡献。	进展缓慢	N/A

Chapter	2017 Recommendation	Progress Rating	2018 Recommendation
<b>Legal Services</b>			
<i>Chinese Government</i>	Revise current regulations to allow foreign law firms to hire and admit PRC-qualified lawyers to their partnerships and do not require them to give up their PRC lawyer's license when they join a foreign law firm.	<b>Low Progress</b>	Revise current regulations to allow foreign law firms to hire and admit PRC-qualified lawyers to their partnerships without requiring them to suspend their PRC lawyer's license when they join a foreign law firm.
<i>US Government</i>	Negotiate with China to revise the current regulations to permit international law firms in China to enjoy the same benefits shared by Chinese law firms operating their offices overseas.	<b>Low Progress</b>	Negotiate with China to revise current regulations, in order to allow international law firms in China to enjoy the same benefits as Chinese law firms operating overseas.
<b>Machinery Manufacturing</b>			
<i>Chinese Government</i>	Eliminate restrictions on free flow of capital, information, and merchandise in the machinery manufacturing industry and provide equal treatment to both domestically and foreign-invested enterprises.	<b>Moderate Progress</b>	Make air pollution control policies and implementations more transparent and consistent to ensure the normal operations of the machinery manufacturing industry.
<b>Media and Entertainment</b>			
<i>Chinese Government</i>	Reduce non-tariff and market access barriers to entry for all types of foreign media and entertainment. Increase and then remove all quotas for foreign films.	<b>Low Progress</b>	Reduce non-tariff and market access barriers to entry for all types of foreign media and entertainment. Delay in doing so risks a rise in support for the imposition of reciprocal restrictions on Chinese media and entertainment in the United States.
<i>US Government</i>	Work with China and other WTO partners in the renegotiation of the film quota agreement, with the goal of allowing market forces to play a greater role and taking steps to eliminate quotas for foreign films.	<b>Low Progress</b>	Work with China and other WTO partners in the renegotiation of the film quota agreement with the goal of allowing market forces to play a greater role and eliminating quotas for foreign films.
<b>Northeast China</b>			
<i>Liaoning Government</i>	Partner with the AmCham China Northeast Chapter in setting up annual dialogues with the Mayor of Dalian, the Mayor of Shenyang, the AmCham China Northeast Chapter Executive Committee, and American business leaders with operations in Liaoning. These dialogues should aim to promote further engagement with foreign businesses to discuss the regulatory and operational challenges American companies face in the region and, through a partnership, find practical solutions for addressing top challenges.	<b>Moderate Progress</b>	Continue to hold round-table events with foreign businesses to discuss regulatory and operational challenges, in order to find practical solutions for addressing the most concerning issues outlined in this chapter.
<i>US Government</i>	Encourage the US Consulate's commercial and other staff to intensify their efforts to reach out to local Chinese government officials in more collaborative and creative ways to assist American businesses to find solutions to the challenges raised in this chapter.	<b>No Rating Provided</b>	The US Consulate in Shenyang should continue to reach out to local governments in more collaborative and creative ways, in order to help US business find solutions to the challenges raised in this chapter. Such moves will also simultaneously benefit the broader economy. By acting as a liaison between foreign businesses in Northeast China and the respective government agencies, the US Consulate will make a positive impact on the business environment.

章节	2017年白皮书主要建议汇总	进展评价	2018年白皮书主要建议汇总
<b>法律服务</b>			
中国政府	修改现行法律法规，允许外国律师事务所雇用中国执业律师并任用其为合伙人，不再要求中国执业律师在加入外国律师事务所时放弃执业证。	进展缓慢	修改现行法律法规，允许外国律师事务所雇用中国执业律师并任用其为合伙人，不再要求中国执业律师在加入外国律师事务所时放弃执业证。
美国政府	与中方进行谈判以修改其现行法律法规，给予在华外国律师事务所与中国律师事务所海外分支机构所享有的同等待遇。	进展缓慢	与中方进行谈判以修改其现行法律法规，给予在华外国律师事务所与中国律师事务所海外分支机构所享有的同等待遇。
<b>机械制造业</b>			
中国政府	取消机械制造产业的资本、信息和产品自由流动的限制，给予内外资企业同等待遇。	有所进展	使空气污染控制政策和实施更加透明和一致，以确保机械制造业的正常运行。
<b>媒体和娱乐业</b>			
中国政府	减少各类外国媒体和娱乐项目进入中国市场的非关税壁垒，减少外国媒体提供商的市场准入壁垒。增加外国电影的整体配额，并逐渐取消配额限制。	进展缓慢	减少针对各类外国媒体和娱乐项目进入中国市场的非关税壁垒，和对外国媒体提供商的市场准入壁垒。推迟降低非关税和贸易壁垒，有可能会增加美国对中国媒体和娱乐的互惠限制。
美国政府	与中国及其他 WTO 合作伙伴进行合作，就电影配额协议进行重新协商，以便市场力量能够发挥更大的作用，并逐步取消外国电影配额制度。	进展缓慢	与中国及其他 WTO 合作伙伴进行合作，就电影配额协议进行重新协商，以便市场力量能够发挥更大的作用，并取消外国电影配额制度。
<b>中国东北</b>			
辽宁省政府	与中国美国商会东北办公室合作，建立与大连市长、沈阳市长、中国美国商会东北办公室执行委员会、在辽宁经商美国企业领袖的年度对话机制。这些对话旨在加深与外国企业的接触和了解，探讨美国企业在该地区所面临的法律法规和经营方面的挑战，并通过合作为解决这些主要挑战找到切实可行的办法。	有所进展	继续与外国企业举行圆桌会议，讨论监管和运营方面的挑战，以便为解决本章节所概述的问题找到切实可行的解决方案。
美国政府	鼓励领事馆的商务和其他人员积极与当地政府进行更有合作性和创造性的沟通，帮助美国企业找到本报告所提到的各种挑战的解决方案。	未提供评价	美国驻沈阳领事馆应继续与当地政府进行更有合作性和创造性的沟通，帮助美国企业找到本报告所提到的各种挑战的解决方案。这些举措还将同时惠及整体经济。美国领事馆作为东北地区外国企业与各政府机构之间的联络人，将对商业环境产生积极影响。



Chapter	2017 Recommendation	Progress Rating	2018 Recommendation
<b>Oil and Gas, Energy, and Power</b>			
<i>Chinese Government</i>	Continue to develop SPNGX and increase the market's role in setting the price of natural gas, and deepen the reform of China's natural gas distribution networks.	Moderate Progress	Pursue policy changes and advance the legislative reforms necessary in the oil & gas sector to expand access to upstream acreage, remove restrictions, increase permitting efficiency, and provide fiscal and taxation incentives to attract upstream IOC investors.
<i>US Government</i>	Identify and encourage opportunities to share best practices with relevant Chinese government entities. For example, in the US, open access to upstream acreage and resources and midstream infrastructure, as well as the public availability of data, have attracted high levels of investment and led to technological innovation, resulting in the successful development of unconventional resources.	Low Progress	Identify and encourage opportunities to share US best practices with relevant Chinese government entities. For example, in the US, open access to upstream acreage and resources and midstream infrastructure, as well as the public availability of data, have attracted high levels of investment and led to technological innovation, resulting in the successful development of unconventional resources.
<i>Both Governments</i>	N/A	N/A	Increase dialogues between the two governments and industry on advancing cooperation on renewables, including in the areas of wind, solar, energy storage, and ethanol fuel.
<b>Real Estate</b>			
<i>Chinese Government</i>	Continue rolling out public land registries and enforce an annual property tax in select municipalities to serve as a model for nationwide implementation.	Low Progress	Create a platform for closely monitoring the status of decentralized markets to avoid oversupply in certain areas.
<b>Retail and E-Commerce</b>			
<i>Chinese Government</i>	Regulate the retail industry, including all business formats, under a unified regulatory system and consistently enforce standards across China.	Moderate Progress	Regulate the retail industry, including all business formats, under a unified regulatory system and consistently enforce standards across the whole of China.
<b>Shanghai</b>			
<i>Shanghai Government</i>	Reduce the use of window guidance and discriminatory policies that prevent Shanghai from becoming an international financial center.	Moderate Progress	Issue detailed regulations to carry out the "Supporting Guidance for Foreign R&D Centers" that provides support for foreign R&D in Shanghai.
<b>Sports</b>			
<i>Chinese Government</i>	Identify and adopt international best practices in sports management, such as aggregate salary caps. [GAS]	Moderate Progress	In addition to invest in sports infrastructure, research and review the variety of international sporting initiatives that have encouraged an organic, grassroots interest in sports. [GAS]
<i>US Government</i>	Continue to urge the Chinese government to enhance the protection of IPR associated with sports-related assets. [DOC, USPTO]	Moderate Progress	N/A
<b>Standards, Certification, and Conformity Assessment</b>			
<i>Chinese Government</i>	Officially broaden recognition of international SDOs to include any organization that follows the WTO/TBT principles on international standards development	Moderate Progress	Officially broaden recognition of international SDOs to include any organization that follows the WTO/TBT principles on international standards development.
<b>Tax Policy</b>			
<i>Chinese Government</i>	Begin efforts to simplify VAT rates as soon as possible. [SAT, MOF]	Moderate Progress	Make the unilateral and bilateral APA programs more easily accessible to multinational taxpayers operating in China at the level of both local and central tax authorities. [SAT]

章节	2017年白皮书主要建议汇总	进展评价	2018年白皮书主要建议汇总
<b>石油、能源和电力</b>			
中国政府	继续推动上海石油天然气交易中心的发展，提高天然气定价的市场化，深化中国天然气配送网络的改革。	有所进展	实行政策变革并推进油气行业所需的立法改革，以扩大上游矿区的市场准入，取消限制，提高发放许可的效率，并采取财税激励措施来吸引上游的国际石油公司投资者。
美国政府	寻找机会，鼓励和中国政府相关部门分享最佳实践作法。例如，在美国，通过开放上游探区和中游基础设施的准入以及公开相关数据，投资水平得以提高，技术创新得以开展，非常规资源得以成功开发。	进展缓慢	寻找机会并鼓励与中国政府有关部门分享最佳的实践经验。例如，通过开放上游矿区和资源、中游基础设施的准入以及公开相关数据，美国吸引了高额投资并促成了技术创新，非常规资源因此得以成功开发。
两国政府	N/A	N/A	加强两国政府与业界关于推进可再生能源合作的对话，其中涉及的领域包括风能、太阳能、能源存储和乙醇燃料等。
<b>房地产</b>			
中国政府	我们建议地方政府和住建部展开合作，继续在选定的城市推动公共土地登记和房产税，为全国范围的实施提供示范榜样。	进展缓慢	建立相关平台去密切监控去中心化的市场状况并避免在某些领域出现供过于求的情况。
<b>零售业和电子商务</b>			
中国政府	以统一的监管体系监管零售业（无论商业形式如何），统一全中国的执法标准。	有所进展	以统一的监管体系监管零售业（无论商业形式如何），统一全中国的执法标准。
<b>上海</b>			
上海市政府	减少使用窗口指导和阻碍上海成为国际金融中心的歧视性政策。	有所进展	制订《科创中心建设意见》的实施细则，为上海的外资研发中心提供支持。
<b>体育</b>			
中国政府	确定并采用体育管理方面的国际最佳实践，如设定薪金总额限制。[体育总局]	有所进展	除了投资体育基础设施之外，研究和审查各种各样的激发了人们对体育运动的健康广泛的兴趣的国际体育活动。[体育总局]
美国政府	继续敦促中国政府加强体育资产知识产权保护。[美国商业部、美国专利及商标局]	有所进展	N/A
<b>标准、认证和合格评定</b>			
中国政府	扩大对国际标准制定机构的认可范围，从ISO、IEC和ITU扩大至其他遵循世界贸易组织贸易技术壁垒（WTO/TBT）关于国际标准制定原则的标准制定机构。	有所进展	正式将对国际标准制定机构的认可范围扩大至其他遵循WTO/TBT关于国际标准制定原则的标准制定机构。
<b>税收政策</b>			
中国政府	尽快采取措施简化增值税税率。[国家税务总局、财政部]	有所进展	使地方和中央税务机关层面的跨国纳税人更容易获得单边和双边预先定价安排计划。[国家税务总局]

Chapter	2017 Recommendation	Progress Rating	2018 Recommendation
<b>Tianjin</b>			
<i>Tianjin Government</i>	Current platforms, such as the Tianjin PFTZ, the Jing-Jin-Ji integration plan, and the Belt and Road Initiative, position Tianjin as an innovation center and are welcomed by our members. Implement specific policies in Tianjin that will promote innovation through more advanced uses of technology and information by easing restrictive technological barriers, attracting additional skilled labor, and establishing a more transparent business climate.	<b>Moderate Progress</b>	Ensure appropriate policies, including their enforcement, are applied equally to all companies. Direct more efforts toward public education related to new enforcement initiatives, such as recent efforts to improve air quality and other environmental issues; transparency, in regulations and enforcement, will not only help members to plan efficiently, but will also bring sustained innovation and best practices that can benefit the entire city.
<b>Visa Policy</b>			
<i>Chinese Government</i>	Accept original documents for work permit applications nationwide, instead of requiring notarized and authenticated copies of original documents.	<b>Low Progress</b>	Consider accepting original documents instead of notarized ones for work authorization applications in special conditions.
<i>US Government</i>	Congress should abolish discriminatory per-country caps on employment-based green cards	<b>Low Progress</b>	Congress should abolish discriminatory per-country caps on employment-based green cards.
<b>Wuhan</b>			
<i>Hubei and Wuhan Governments</i>	Expand the current strategy for attracting talent to Wuhan through efforts including managing real estate prices, relaxing hukou regulations, and expanding platforms for universities and companies to work together developing talent.	<b>High Progress</b>	Expand the current strategy of attracting and retaining senior management talent.
<i>US Government</i>	Cooperate with the Hubei and Wuhan governments to promote Wuhan as an investment opportunity through trade delegations.	<b>Low Progress</b>	Provide greater clarity and transparency for Chinese investors seeking to invest in the US.

章节	2017年白皮书主要建议汇总	进展评价	2018年白皮书主要建议汇总
<b>天津</b>			
天津市政府	天津自贸区、京津冀一体化战略以及“一带一路”等平台目前将天津定位为创新中心，我们的会员企业对此表示欢迎。天津应当实施具体的政策，放宽技术壁垒限制，吸引更多的熟练劳动力，营造更加透明的商务环境，以便通过促进先进技术和信息的使用，推动创新。	有所进展	确保合适的政策，包括其在执行上对所有企业都一视同仁。加强关于新措施的公共教育工作，比如近期为改善空气质量以及其他环境问题所做的工作。提高政策和执行的透明度不仅可以帮助会员企业更好地制定规划，还可以带来有益于整个城市的持续创新，取得最佳效果。
<b>签证政策</b>			
中国政府	在全国范围内允许申请工作许可时提交原件，而非提供经过公证和认证的原件副本。	进展缓慢	考虑在特殊情况下，允许申请工作许可时提交原件而非提供经过公证和认证的原件副本。
美国政府	取消按国别分配工作绿卡的歧视性制度。	进展缓慢	国会应取消国别分配工作绿卡的歧视性制度。
<b>武汉</b>			
湖北省和武汉市政府	通过调控房地产价格、放宽户口限制以及为高校和企业合作开发人才提供平台等方式扩大当前的人才吸引战略。	进展明显	拓展当前吸引和留住高级管理人才的策略。
美国政府	和湖北省及武汉市政府合作，通过贸易代表团提升武汉的投资机会。	进展缓慢	为寻求在美国投资的中国投资者保障明确性和透明度。



Part Two:  
Industrial Policy and Market Access  
产业政策和市场准入

# Civil Society

## Introduction

**B**usiness sustainability involves companies developing and implementing strategies that are economically, socially, and environmentally sustainable. Social, non-profit, inter-governmental, and non-governmental organizations (NGOs) (hereafter collectively referred to as non-profit organizations, or NPOs) play a crucial role in fostering sustainable business practices in the following ways: ❶ they provide an independent source of accountability and expertise for businesses and governments; and ❷ they partner with businesses and governments in local communities to provide support and services for implementing sustainability and community engagement initiatives.

A successful non-profit sector can contribute significantly to addressing China's broader sustainability challenges for the benefit of the Chinese people. These benefits include: helping to provide an educated and healthy workforce; improving and protecting the environment; promoting food and nutrition security; expanding inclusivity of access to services such as health and finance; advocating for food safety; developing productive labor relations; fostering active participation in society through volunteerism; providing social services to marginalized populations; and supporting the government in monitoring corporate compliance.

The US and many other countries with long traditions of philanthropy have active civil society sectors that work effectively with both government and businesses to address local and national issues. As China's rapid growth has produced many economic, social, and environmental challenges, this sector can make positive contributions, especially in the area of sustainable development.

## Recent Developments in Business Sustainability

The 19th CPC National Congress report declared the defining theme of "Socialism with Chinese Characteristics for a New Era," outlining a new focus on addressing inadequate and unbalanced development, as well as on the population's growing needs for better living standards. This new focus is

set to bring a broad range of opportunities for businesses to promote sustainability and more balanced growth.

Government, business and civil society share an overall emphasis on the quality and efficiency of economic development. There are a rapidly increasing number of sustainability initiatives between governments and businesses in China. Businesses leverage their expertise in sustainability management and technology to help solve social and economic challenges at the local level, helping governments to achieve sustainability goals, which are often similar or derived from the United Nations Sustainable Development Goals (SDGs).

## Recent Developments in the Non-Profit Sector

China's Law on the Management of the Activities of Overseas NGOs Within Mainland China (Overseas NGO Law) took effect on January 1, 2017. By December 31, 2017, after a full year of implementation, 259 foreign NPOs had registered 305 representative offices. These included 72 from US-based organizations, more than from any other country. Nearly half of the registered offices belong to chambers of commerce and trade promotion organizations. During the same period, 224 foreign NPOs without representative offices obtained permits to conduct 487 "temporary activities". In total, after accounting for overlaps between the two groups, fewer than 500 foreign NPOs either registered an office or had been approved for temporary activities. According to Chinese official media, the number of foreign NPOs active in mainland China before the law was approximately 6,000, meaning the number of foreign NPOs that applied for and obtained approval to conduct activities in 2017 was less than 9% of the total. The figure in turn reflects the many challenges posed by the Overseas NGO Law for the operations of foreign NPOs.

Foreign NPOs, including corporate foundations, have been integral to the operations of many AmCham China member companies. Through corporate foundations registered as NPOs in the US, many members have worked with foreign or local industry associations, universities, environmental organizations, science and technology institutions, and other bodies for purposes such as information sharing,

# 企业可持续性和非营利性参与

## 引言

**企**业可持续性是指企业制定和实施的具有经济、社会和环境可持续性的战略。社会、非营利、政府间或非政府组织（NGO）（以下统称为非营利组织）能够：① 为企业和政府提供独立来源的责任和专业知识，并且② 与本地社区的企业和政府合作为实现可持续发展和社区参与项目提供支持和服务，从而在促进企业可持续发展方面发挥至关重要的作用。

兴旺繁荣的非营利组织有助于大大缓解中国面临的可持续发展的挑战，符合中国民众的利益。具体的好处包括：提高劳动力的教育和健康水平、改善和保护环境、提高食品和营养安全、扩大医疗和金融等服务行业的准入、倡导食品安全、发展有助于提高生产力的劳资关系、通过志愿服务推动社会的积极参与、向边缘化群体提供社会服务、支持政府对企业合规的监督等。

在美国和其他许多国家，慈善有着悠久的历史，也因此拥有活跃的公民社会组织。它们通过与政府和企业积极开展合作，解决本地和全国性问题。中国经济的快速发展产生了诸多经济、社会和环境挑战，而这类组织可做出积极贡献，特别是在可持续发展方面。

## 企业可持续性领域的最新进展

中国共产党第十九次全国代表大会报告宣布了“中国特色社会主义新时代”的主题，提出了解决发展不平衡、不协调问题的新思路，同时也强调了人民不断提高生活水平的需求。这一新的重点将为企业带来广泛的机遇，促进其可持续性和更平衡的增长。

政府、企业和民间团体都全面重视经济发展的质量和效率。行业协会，如中国美国商会（商会），在使商业利益与中央政府政策保持一致方面，如扶贫和绿色发展，发挥了一定的积极作用。在中国，政府和企业之间的可持续

发展计划正在迅速增长。企业利用其在可持续性管理和技术方面的专长，帮助解决地方层面的社会和经济问题，帮助各国政府实现联合国可持续发展目标（SDGs）。

## 非营利领域的最新进展

2017年1月1日，《中华人民共和国境外非政府组织境内活动管理法》（《境外非政府组织法》）正式生效。到2017年12月31日，经过整整一年的实施，259家境外非营利组织注册了305个代表机构。其中72家来自美国，位列第一。接近一半的代表机构经由商会和贸易促进组织注册。同时，224个没有注册代表机构的境外非营利组织获得了进行487个“临时活动”的备案。总而言之，考虑到两组间的重叠计数量，少于500家境外非营利组织注册了代表机构或已获批准进行临时活动。据中国官方媒体报道，在该法律实施之前，活跃的中国大陆的外国非营利组织约6000家，这意味着在2017年申请并获得批准组织活动的境外非营利组织的数量还不到总数的9%。这一数字也反映出《境外非政府组织法》给境外非营利组织运作带来的诸多挑战。

境外非营利组织，包括企业基金会，是诸多商会成员正常运营中不可或缺的一部分。我们的很多会员通过其在美国注册为非营利组织的企业基金会，同外国或当地行业协会、大学、环保组织、科技机构及其他组织展开频繁合作，进行信息共享、调研、市场开发及创新模式的交流。境外基金会和非营利组织在指导和实施中外企业的业务可持续性和社区参与活动中起到至关重要的作用。

然而，在实施的第一年，新的《境外非政府组织法》迫使许多外国商界人士暂停支持当地社区活动。截至年底，只有一家美国企业基金会在《境外非政府组织法》下注册了代表机构，而另外两家公司则获准进行“临时活动”。其他的企业基金会，以及许多其他类型的境外非营利组织，要么推迟了申请，要么决定暂缓执行在中国的项目。暂停



research, market development, and innovation. Both foreign foundations and other NPOs a critical role in guiding and implementing business sustainability and community engagement activities of many commercial enterprises, both foreign and Chinese.

However, during its first year of implementation, the new Overseas NGO Law forced many in the foreign business community to suspend their support of local community activities. As of year's end, only one US corporate foundation had registered a representative office under the Overseas NGO Law, while two others had obtained permission to conduct "temporary activities." Other corporate foundations, as well as many other kinds of foreign NPOs, were either delayed in the application process or decided to put their China programs on hold. Reasons for suspending their activities included the difficulty of finding an obligatory official sponsor, fundraising restrictions, a lack of clarity, and the high administrative costs of the application and ongoing reporting processes under the Overseas NGO Law.

These problems seem to stem from the Overseas NGO Law itself, rather than from its implementation, which has been more flexible than anticipated. Implementation was entrusted to the Ministry of Public Security (MPS) and specialized offices in the ministry's provincial-level bureaus. Foreign NPOs mostly found the newly-established Office of Overseas NGO Administration in the Beijing Municipal Public Security Bureau and its counterparts in other jurisdictions to be professional, accessible and responsive. Foreign NPO staff were able to obtain prompt guidance about paperwork and filing procedures by contacting the offices by telephone, social media and in person. After the Overseas NGO Law had been in effect for a few months, the police began modestly expanding the list of approved Professional Supervisory Units (PSUs), namely the official sponsors that foreign NPOs must have in order to register. The police also observed a de facto grace period with respect to foreign NPOs that already had offices in China: as long as these NPOs were in the process of registration, the police did not require them to close their offices in 2017. It has been said that this grace period will be extended into 2018; AmCham China commends this flexibility.

Some of the police NPO administration offices provided training and information sessions for PSUs, universities, and foreign and domestic NPOs. However, since the vast majority of the organizations affected by the law are located overseas and do not have China offices, there is a need for China's overseas embassies and consulates to hold similar training and information activities. In addition, the MPS online portal for submitting applications under the law has no English-language information. AmCham urges the MPS to make its portal bilingual in recognition of the fact that the site is for the use of foreign organizations.

## Ongoing Regulatory Issues

Many foreign NPOs have appreciated the friendliness and flexibility of many provincial police bureaus with regard to efforts to comply with the Overseas NGO Law. However, the most significant obstacles that they encountered during the first year were beyond the capacity of the police bureaus to solve. These included the following:

### *Professional Supervisory Units*

- Although the list of eligible PSUs has been expanded, obtaining PSU sponsorship remains the single biggest obstacle to registration for foreign NPOs. Many eligible PSUs are unfamiliar with the work of foreign NPOs, consider them a political risk, and lack any incentive to take on the additional work of supervising them. PSUs are not offered any additional staff or budgets to handle the extra work, and some have said that they lack the capacity to take on more than a few foreign NPOs. Moreover, several suitable PSU candidates have not been included on the approved list. Organizations such as the Chinese Academy of Governance, Chinese Academy of Social Sciences, and the Development Research Center of the State Council, which work on a wide range of policy and program areas and have greater experience interacting with foreign NPOs, are still not allowed to serve as PSUs. In cases where sponsorship has been obtained, some PSUs have required the foreign NPOs they sponsor to make significant changes in their programs. Even after registration, many NPOs have found that they need to spend weeks negotiating a "work plan" with their PSU before they can carry out their programs. Some foreign NPOs also have found that, although PSUs are not allowed to charge for sponsorship, their PSU expects to partner with them and share in program funds.

### *Unclear and Time-Consuming Requirements for Temporary Activity Permits*

- Some foreign NPOs seeking approval for temporary activities have found the application-preparation process to be almost as expensive and time-consuming as preparing an application to register a representative office. Both procedures require certifying and translating the foreign NPO's past and current articles of incorporation and by-laws, which often takes several months. The next major challenge is presented when a foreign NPO's Chinese partner seeks written approval from its own PSU, which has complete discretion to refuse without giving any reason. The final stage requires the Chinese partner to file the temporary activity permit application with the police, but foreign NPOs have found inconsistencies from one province to another in this phase. Police in some provinces have accepted filings for projects that include activities in

活动的原因包括：难以找到必要的业务主管单位、筹资限制、法律不清晰，以及履行《境外非政府组织法》要求的各项申请和报告程序而可能产生的较高行政成本。

这些问题似乎源自于《境外非政府组织法》本身，而不是执行产生的问题，因为执行要比预期更灵活。执行任务委托给公安部和省级公安厅局的专门机构。境外非营利组织发现北京市公安局以及其他省级公安部门新成立的境外非政府组织管理办公室非常专业，容易沟通、回复及时。境外非营利组织工作人员通过电话、社交媒体和面谈等方式，从上述办公室及时获得了有关文书准备和备案程序的及时指导。在《境外非政府组织法》生效的几个后，颁布新增的业务主管单位名录陆续颁布；警方还给予尚未依法注册但事实上在境内已有办公室的境外非营利组织一段宽限期：只要这些非营利组织仍在办理注册，警方就不会要求他们在2017年关闭办公室。据说这个宽限期将延长到2018年，商会对此表示赞赏。

许多省级公安部门的境外非政府组织管理办公室为业务主管单位、大学和国内外非营利组织举办了培训和信息交流会议。然而，由于该法律影响到的绝大多数组织都位于海外且没有中国办事处，因此需要中国驻外使领馆举办类似的培训和信息交流活动。此外，公安部为方便境外非营利组织提交申请的“办事服务平台”门户网站没有英文界面，考虑到该网站的主要对象是境外组织，商会希望公安部考虑提供双语界面。

## 现存监管问题

许多境外非营利组织都体验到并赞赏省级公安部门在处理涉及《境外非政府组织法》的合规问题方面展现出的友好和灵活性。然而，有些问题可能超出了公安部门的管理权限，这些问题包括以下几点：

### 业务主管单位不清晰

尽管有资格的业务主管单位名单已经增加，但找到一家业务主管单位仍然是境外非营利组织注册的最大障碍。许多有资格的业务主管单位并不熟悉境外非营利组织的工作，认为这些境外组织有政治风险，没有任何动机去承担监督境外组织的额外工作。业务主管单位也没有任何额外的工作人员或预算来处理增加的工作量，有些单位表示他们只有能力担任一两家境外非营利组织的业务主管。此外，一些合适的潜在业务主管没有列入名录。国家行政学院、

中国社会科学院、国务院发展研究中心等机构，致力于政策和规划领域研究，与境外非营利组织有更多的合作经验，但仍未获批准担任业务主管单位。而对于已经找到了业务主管单位的境外非营利组织而言，一些业务主管单位要求被其管理的境外非营利组织在项目中做出重大更改。而且，即便按照《境外非政府组织法》注册之后，许多境外非营利组织发现需要花费数周时间与他们的业务主管单位协商“工作计划”，然后才能执行计划。此外，一些境外非营利组织还发现，尽管业务主管单位不允许收费，但业务主管单位仍希望与其进行项目合作从而分享该境外非营利组织的项目资金。

### 临时活动批准程序要求不清楚且耗时

一些寻求批准临时活动的境外非营利组织发现，申请准备过程几乎与申请注册代表处一样成本高昂且耗时。这两种程序都需要提供、翻译组织过去和现在的公司章程，通常需要几个月。另一个主要挑战是，当境外非营利组织的中方合作伙伴向自己的主管单位申请书面批准时，该单位完全可以无理由拒绝。办理备案的最后一步要求中方合作伙伴向境外非政府组织管理办公室提交临时活动备案申请，但不同省份对于这一步骤的处理存在差异。只要中方合作伙伴在其管辖范围内，一些省份的境外非政府组织管理办公室已经接受在多个省份开展活动的申请；但其他省份的境外非政府组织管理办公室则拒绝接受多省备案，要求境外非营利组织要么将项目限制在一个省份，要么建立伙伴关系，并在多个省份进行备案。

### 措辞不清或模糊

《境外非政府组织法》中的许多关键术语都没有定义。例如，目前尚不清楚何种类型的活动可以划分为需要境外非营利组织办理临时活动备案的级别。举办小规模或私人活动是否无须备案、境外非营利组织派遣专家参加由境内单位组织和资助的活动是否无须备案，以及许多其他情形等都没有形成共识。

《境外非政府组织法》禁止境外非营利组织“从事或资助营利性活动”，这是另一个未定义的概念。截至目前，一些地区的境外非政府组织管理办公室已经把这解释为境外非营利组织不能资助或与注册为公司的国内机构合作，即使这些国内机构实质上是非营利组织，而且拟议的项目也是非营利的。此外，尚不清楚《境外非政府组织法》是否可以允许境内企业与境外非营利组织联合开展营销活动

multiple provinces, as long as the Chinese partner is based in their jurisdiction; police in other provinces have refused to accept multi-province filings, requiring foreign NPOs to either restrict their projects to a single province, or establish partnerships and undertake filings in multiple provinces.

### *Unclear or Ambiguous Language*

- Many of the key terms in the Overseas NGO Law are undefined. For example, it is unclear what type of activity can be classed at a level that requires a foreign NPO to obtain approval. No consensus exists on holding small-scale or private events, participating as an expert in activities organized and funded by another entity, and many other possible scenarios.
- The Overseas NGO Law prohibits foreign NPOs from “engaging in or financing profit-making activities,” another undefined concept. So far, police in some areas have interpreted this to mean foreign NPOs cannot fund or partner with Chinese organizations registered as companies, even if those organizations operate as non-profits and the proposed programs would also be nonprofit. In addition, it remains unclear if joint marketing activities between companies and NPOs (e.g., “a portion of the product sales would go to support a charitable cause”) are permitted in the context of the Overseas NGO Law.
- The Overseas NGO Law bars foreign NGOs from fundraising in China. This is currently being interpreted as meaning that foreign NPOs cannot passively receive financial support from Chinese companies or foreign-invested enterprises in China, whether from their CSR programs or other corporate funding channels. As a result, this has cut off an important source of funding for foreign NPO operations in China, since it is increasingly difficult to raise funds abroad for programs in China, given that most donors want to see the fruits of their donations in their own communities. The fundraising prohibition has also been interpreted as a prohibition on companies in China providing in-kind donations (非现金捐赠) to foreign NPOs. This is now creating legal uncertainties for companies that previously made generous donations of equipment, software and even advertising spaces to foreign NPOs.

As of the end of 2017, implementing regulations had yet to be issued, resulting in inconsistent interpretations and practices from one province to another. Moreover, none of the provincial police bureaus have published written guidance setting out their interpretations. This has added to the confusion of those foreign NPOs without mainland offices that have tried to decide if and how they should try to resume programs in mainland China.

## Recommendations

### *For the Chinese Government:*

- **Update/expand the list of PSUs and provide clear procedures and better incentives for government entities to act as PSUs.** [MPS, State Council, NPC]
- Simplify the documentation required for temporary activity permit application, and require transparency and accountability from Chinese partner PSUs that withhold approval. [MPS, State Council, NPC]
- Clarify ambiguous language in the Overseas NGO Law and publish clear and consistent guidelines. The process of drafting implementing guidelines should be an open one in which foreign NPOs and their Chinese partner organizations are able to participate. [MPS, State Council, NPC]
- Clarify tax exempt status and tax rules as well as accounting rules applicable to foreign NPO representative offices; coordinate with the Ministry of Foreign Affairs to provide timely and effective support to foreign NPO representative offices on visas. [MPS, State Council, PSU]
- Provide English-language versions of important guidance and announcements on the MPS web portal for filing representative office registration and temporary activity permit applications; conduct more outreach activities with foreign NPOs and their Chinese partners to provide updated information about how police are interpreting and applying the law, including in overseas capitals where many foreign NPOs that engage in “temporary activities” in China have offices. [MPS]

### *For the US Government:*

- **Continue to reiterate strong and abiding concerns regarding the Overseas NGO Law in exchanges with relevant government stakeholders in China.** [US Department of State]

(例如,“该产品销售额的一部分将用于支持某个慈善项目”。

《境外非政府组织法》禁止境外非政府组织在中国境内募资。目前这一条款也被解读为禁止境外非营利组织“被动接受”国内企业或在华外商投资企业的资金支持,无论是通过企业社会责任项目方式还是通过企业的其他筹资渠道。因此,这种做法切断了境外非营利组织中国业务的重要资金来源,因为现在越来越难为中国的慈善项目筹集海外资金,而且大多数捐助者希望看到他们自己的社区享受捐款成果。上述禁止募资的法律条文也被解读为禁止国内的企业给境外非营利组织提供非现金形式的捐赠。这对于此前给境外非营利组织慷慨捐赠过设备、软件、甚至广告位的企业来说,存在法律方面的不确定性。

截至 2017 年底,《境外非政府组织法》实施细则尚未出台,导致各省市的解读和做法不一致。此外,各省级境外非政府组织管理办公室均未发表书面指导意见。书面实施细则的缺乏会增加境外非营利组织的困惑,尤其是对于那些还没有在中国大陆设立办公室的境外非营利组织来说,他们需要决定是否应该及如何在中国大陆继续开展项目。

## 建议

### 对中国政府:

- 更新 / 扩大业务主管单位名录,同时为担任业务主管单位的相关政府机构制定明确的程序及设立更好的激励措施。[公安部、国务院、全国人民代表大会]
- 简化临时活动备案申请所需的文件,并要求中方合作伙伴的主管单位增加审批的透明度和问责制。[公安部、国务院、全国人民代表大会]
- 阐明《境外非政府组织法》中模糊的表述,并发布清晰一致的实施细则。起草实施细则的过程应该开放,使境外非营利组织及其业务主管单位能够参与其中。[公安部、国务院、全国人民代表大会]
- 明确适用于境外非营利组织代表机构的免税情形和税收规定以及会计规则;与外交部协调,及时、有效地支持境外非营利组织代表机构的签证工作。[公安部、国务院、业务主管单位]

- 在公安部门户网站上提供英文版本指导意见和公告,以便于代表机构注册和临时活动备案申请;为境外非营利组织及其中方合作伙伴开展更多的外展活动,包括在经常来华开展“临时活动”的境外非营利组织的母国首都提供有关境外非政府组织管理办公室如何解读和应用法律的最新信息。[公安部]

### 对美国政府:

- 在与中国政府相关方进行交流时,继续重申对《境外非政府组织法》的深度长久关切。[美国国务院]

# Competition Law

## Introduction

In 2017, China's three antitrust regulators – the Ministry of Commerce (MOFCOM), the National Development and Reform Commission (NDRC), and the State Administration for Industry and Commerce (SAIC), collectively the Anti-Monopoly Enforcement Agencies (AMEAs)—continued to display increasing sophistication in their enforcement of China's Anti-Monopoly Law (AML). However, despite the many commendable improvements since the enactment of the AML in 2008, concerns persist regarding: ❶ the disproportionately heavy role of industrial policy in AML enforcement; ❷ insufficient transparency and due process in investigations; and ❸ selective admittance of foreign counsel to meetings and hearings with relevant enforcement authorities.

## Regulatory Updates

### *MOFCOM's Enforcement Activities*

#### *Improved Efficiency in Merger Review*

AmCham China appreciates MOFCOM's continued efforts in 2017 to further streamline and accelerate its merger review process. The simplified procedure has proven to be an effective channel for non-issue cases to be resolved in a timely fashion.

In 2017, MOFCOM received 400 merger filings, accepted 353 of them and concluded 344 cases. According to MOFCOM's statistics, the average time for accepting and concluding a case was shortened by 14.2 percent and 8 percent in 2017. Among the 344 concluded cases, 337 were unconditionally cleared and seven were cleared subject to conditions (further discussed below). MOFCOM reported that 30 percent of the concluded cases were large and complex cases. The manufacturing sector accounted for over 50 percent of the cases concluded. Approximately 70 percent of the cases involved foreign companies, mainly from the US, Europe, and Japan. The overall M&A transaction size increased with more than 20 percent of the cases valued at more than RMB 10 billion (approx. US \$1.5 billion).

MOFCOM's simplified procedure continued to receive significant acceptance and appreciation from the business community at large. Introduced in the first half of 2014, the simplified procedure has significantly reduced the review time for cases that do not present material competition or industrial policy concerns.

As of the first half of 2017, MOFCOM had cleared 123 of 124 cases under the simplified review procedure. Of these, 116 cases (94 percent) were cleared within Phase I (30 calendar days) and six cases (6 percent) were cleared in Phase II (an additional 90 calendar days), while none entered Phase III review. During the first half of 2017, the average clearance time was 22 days for simple cases, two days faster than full year 2016.

While AmCham China commends MOFCOM for its continued efforts to improve the efficiency of the simplified procedure, recent cases indicate that MOFCOM is becoming increasingly stringent and formalistic in regulating the use of the simplified procedure, even where the bright-line rules for acceptance on eligibility appear to be met. Since 2016, an increasing number of cases are forced to the ordinary procedure despite being eligible at first glance for the simplified procedure. MOFCOM's broad discretion to accept or reject a simple case application creates substantial uncertainty for business operators considering whether to apply for this type of merger review. In particular, rejection by MOFCOM, which appears to be on the rise, can cause parties to lose significant time because it essentially requires restarting the entire review process. AmCham China urges MOFCOM to follow the bright-line rules for published simple case acceptances (rather than reserving plenary discretion to accept or reject a case), or eliminate the de facto timing penalty for cases that must be converted from the simple procedure to the ordinary procedure.

#### *Persistent Challenges in the Ordinary Procedure*

Restrictive conditions were imposed in seven merger filings in 2017, the largest number of conditional clearances in a single year in MOFCOM's history. As in previous years, the introduction of industrial policy into the review of non-issue cases may still result in severe remedies as well as increased review time, especially for high-profile cases in sensitive industries. An unwelcome return to formalism

# 竞争法规

## 引言

2017年，中国的三大反垄断监管部门——商务部、国家发展和改革委员会（发改委）和国家工商总局（工商总局）（合称为“反垄断执法机构”）继续开展《反垄断法》执法，不断丰富经验。尽管中国在2008年实施《反垄断法》以来已取得了许多进展，但依然存在如下问题：①产业政策在《反垄断法》执法过程中影响力过大；②调查程序缺乏透明度且不能完全奉行程序正义；③相关执法部门选择性地允许外国律师参加会议和听证。

## 监管最新进展

### 商务部的执法工作

#### 实施并购备案审查程序的效率有所提高

中国美国商会（商会）赞赏商务部在2017年相继推出的多项从进一步简化、加快并购审查流程的举措。简易程序已被证实为及时解决非问题类案件的有效渠道。

在2017年，商务部收到了400份并购申报，共受理353份，结案344件。根据商务部的统计，在2017年，受理和结案的平均时间缩短了14.2%和8%。在344个了结的案件中，337件无条件批准，7个有条件批准（下文将进一步讨论）。据商务部报告，在完成的申报报告中，有30%是规模较大且复杂的案件。在上述案例中，制造业占了50%以上。大约70%的案件涉及外国公司，主要来自美国、欧洲和日本。今年整体并购交易规模有所增加，超过20%的案例价值超过100亿元人民币（约15亿美元）。

商务部的简易程序持续获得业内广泛的认可和赞赏。简易审查程序于2014年上半年起实施，大大缩短了不具有重大竞争或产业政策问题案件的审查时间。

## MOFCOM Simplified Review Cases in the First Half of 2017, 2016 and 2015

2015年和2016年及2017上半年商务部通过简易审查程序审结的案件

	% Cleared in Phase 1 案一阶段 审结比例	% Cleared in Phase 2 案二阶段 审结比例	% Cleared in Phase 3 案三阶段 审结比例	Refile 重新申请	Average Review Days 平均评审 天数	Median Review Days 中值评审 天数	Longest Review 最长评审 天数	Shortest Review 最短评审 天数
2015	89%	9%	2%	1	31	27	278	11
2016	94%	6%	0%	0	24	24	85	11
20171H	94%	6%	0%	1	22	22	66	11

\* A 10-day public comment period has been included in review time for all simple deals.

\* A 所有简易案件的评审时间中均包含了10天的公众评议期。

has also added significant burdens to companies under review to provide data and information relating to areas of no apparent significance to competition or industrial policy.

In particular, review times from important industry stakeholders consulted by MOFCOM, such as the Ministry of Industry and Information Technology (MIIT) and certain industry trade associations, now routinely extend well beyond the requested timelines established by MOFCOM, meaning that such stakeholders can essentially delay approval indefinitely by delaying input to MOFCOM. MOFCOM must be granted effective mechanisms to prevent such delays from extending review times in ordinary procedure cases.

In addition, there has been a marked and unwelcome increase in international counsel being barred from meetings with MOFCOM. Particularly noted in Review Division One (which handles cases related to important industries such as semiconductors, telecommunications and other technologies), American companies' international counsel now find themselves routinely prohibited from attending meetings with the Anti-Monopoly Bureau during merger control review, in violation of China's 2014 commitments in the US-China Joint Commission on Commerce and Trade (JCCT) to permit, as normal practice, the parties' international counsel to attend meetings related to review proceedings.

A summary of the seven conditional approvals is provided below.

*Dow/DuPont*: On April 29, 2017, MOFCOM approved the merger between Dow and DuPont, the two significant agricultural and chemical suppliers. MOFCOM found competition concerns in the herbicides and rice pesticides markets in China, as well as the copolymer and ionomer markets globally. MOFCOM required divestiture of certain active ingredients used for DuPont's selective rice herbicides and rice insecticides, divestiture of the copolymer and ionomer businesses of Dow, guaranteed supply of certain active ingredients to third-party Chinese companies in the next five years at a reasonable price, and a prohibition on exclusivity for Chinese distributors reselling certain active ingredients.

*Broadcom/Brocade*: On August 22, 2017, MOFCOM conditionally approved Broadcom's US\$ 5.5 billion acquisition of Brocade. Broadcom and Brocade supply switches and adaptors, respectively, for fiber channel storage area networks. Broadcom also provides the upstream integrated circuit (IC) in the switches. In the switches market, MOFCOM found that Broadcom may foreclose competition by inappropriately using confidential information from other third-party switch suppliers that may become accessible to it when acting as the IC supplier. In the adaptors market, which MOFCOM found to be a "neighboring" market to the switches market, Brocade commands a global market share of over 70 percent and it only has one major competitor. MOFCOM thus found that the proposed transaction may give the merged entity

the ability to degrade interoperability between switches and adaptors to the detriment of competitors' products, and could also engage in detrimental tying or bundling for switches and adaptors. MOFCOM required Broadcom to maintain interoperability between its own switches and third-party adaptors, establish firewalls with regard to the confidential information of third-party adaptor and switch suppliers, and maintain current trading conditions without engaging in tying or bundling in any form for ten years.

*HP/Samsung Electronics Printing*: On October 5, 2017, MOFCOM conditionally approved HP's acquisition of the global printing business of Samsung Electronics. Although the transaction was unconditionally approved in all other jurisdictions, MOFCOM narrowly defined A4 laser printers as a separate market and required HP to make several commitments for the next five years in China, including not to reduce printer prices by over 10 percent year-on-year, not to acquire any A4 laser printer competitor without MOFCOM's prior approval, not to enhance security to block the consumable products of certain third parties, not to engage in false advertising with respect to compatibility, and not to engage in illegal tying.

*Agrium/Potash*: On November 6, 2017, MOFCOM conditionally approved the merger between Agrium and Potash Corporation. MOFCOM found that Potash was already the largest supplier of potassium chloride worldwide and determined that the merger may increase the merged entity's market power and diminish the countervailing buyer power of Chinese customers. Therefore, MOFCOM required Potash to ❶ divest its ownership in three smaller suppliers in the potassium chloride market (Israel Chemical Industry, Arabia Potash and Chile Chemical Industry); ❷ not acquire shares in any other potash competitors within five years without MOFCOM's prior approval; ❸ relinquish management rights and limit shareholder rights in a Chinese potassium supplier to the level of passive financial investor; and ❹ commit one of its joint ventures to maintain the export level of potassium chloride to China on an annual basis and continue its current sales practices.

*Maersk Line/Hamburg Süd*: On November 7, 2017, MOFCOM conditionally approved Maersk Line's proposed acquisition of Hamburg Süd. MOFCOM found that the transaction would harm competition in the Far East/South America West Shore and Far East/South America East Shore vessel lines for ordinary and refrigerated container shipping. MOFCOM required several conditions, including exiting, not entering and/or not renewing certain vessel sharing agreements, reducing shipping capacity to a share below 40 percent and maintaining such market share in the following three years.

*Advanced Semiconductor Engineering (ASE)/Siliconware Precision Industries (SPIL)*: On November 24, 2017, MOFCOM conditionally approved ASE's acquisition of SPIL. Despite the fact that the parties' combined market share in China

截止到 2017 年上半年，商务部通过简易审查程序已经评审了 124 个案件中的 123 个。其中，116 例 (94%) 在第 I 期 (30 个日历天) 内审结，6 例 (6%) 在第二阶段 (另外 90 个日历天) 审结，且没有任何案件进入第三阶段检查。在 2017 年上半年，简易案例的平均审结时间为 22 天，比 2016 年整整快了两天。

商会赞赏中国继续努力提高简化程序的效率，但最近的案例表明，中国商务部在规范简化程序的使用方面正变得越来越严格和形式主义，即使在符合接受申请规定和要求的情况下。自 2016 年以来，越来越多的案例即使一眼就看出符合简易程序，也被强制执行普通程序。商务部决定接受或拒绝一个简易程序申请，这给考虑是否要申请该类并购审查的企业经营者带来了巨大的不确定性。特别是，商务部似乎不断增加否决，可能会导致各方错失宝贵时间，因为它实际上需要重新启动整个审查过程。商会促请商务部遵循发布的简易案例 (而不是保留全体裁量权，接受或驳回案件) 的规定，或取消必须从简单程序转换为普通程序造成的实际时间损失。

### **普通程序持续面临的挑战**

2017 年，七宗并购申请被限制，这是商务部历史上做出有条件批准数量最多的一年。与往年一样，在审查非问题案件时引入产业政策可能仍会导致严重的限制，并增加审查时间，特别是敏感行业的知名案件。不受欢迎的形式主义的回归，比如提供与竞争或产业政策领域无明显相关的数据和信息。也给正在审查的公司增加了重大的负担。

特别是，商务部顾问的重要的产业利益相关者，如工业和信息化部等 (工信部) 和某些行业贸易协会现在的审查时间通常远远超越由商务部规定的时间，这意味着这些利益相关者可以通过拖延给商务部提供意见而无限期推迟批准。必须给予商务部有效的机制，以防止在普通程序案件中产生审批程序时间的延误。

此外，禁止国际律师与商务部举行会议增长显著，并且不受欢迎。特别指出在审查部门 (负责处理相关案件重要行业，如半导体、电信和其他技术)，美国公司的国际顾问在并购管制审查期间经常被禁止与反垄断局举行会议，违反了中国在 2014 年美中商贸联合委员会的承诺，在正常情况下，应允许缔约方的国际律师参与与审查程序有关的会议。

以下是 7 个有条件批准案件的总结：

**陶氏 / 杜邦**：2017 年 4 月 29 日，商务部批准了两家重要的农业和化工供应商——陶氏和杜邦的合并。商务部发现在中国的除草剂和水稻农药市场，以及全球的共聚物和离子市场上存在竞争方面的问题。商务部要求剥离用于杜邦的选择性水稻除草剂和水稻杀虫剂的某些活性成分，陶氏的共聚物和离子交联聚合物业务剥离，保证供应某些活性成分的第三方中国企业在未来五年能以合理的价格供应，且禁止中国经销商转售排他性某些活性成分。

**博通 / 博科**：2017 年 8 月 22 日，商务部有条件批准博通以 55 亿美元收购博科。博通和博科供应开关和适配器分别用于光纤通道存储区域网络。博通还提供开关的上游集成电路 (IC)。在交换机市场上，商务部发现，博通可以通过不适当地使用来自其他第三方交换机供应商的保密信息来阻止竞争，当作为集成电路供应商时，该供应商可能会取得这些信息。在中国移动通信市场上，作为一个“邻近”的市场，博科在全球市场上占有 70% 以上的市场份额，而且它只有一个主要竞争对手。因此，商务部发现，拟议中的交易可能使并购后的实体有能力降低交换机和适配器之间的互操作性，从而损害竞争对手的产品，并可能会对交换机和适配器造成有害的捆绑。商务部要求博通在自己的交换机和第三方适配器之间保持互操作性，在第三方适配器和交换机供应商的机密信息上建立防火墙，并保持当前的交易条件长达 10 年，不参与任何形式的捆绑。

**惠普 / 三星电子印刷**：2017 年 10 月 5 日，商务部有条件批准惠普收购三星电子全球印刷业务。虽然该交易在其他司法管辖区是无条件批准，但是商务部狭义定义 A4 激光打印机为一个独立的市场，要求惠普在中国做出未来五年的承诺，包括不同比降低打印机价格超过 10%，没有商务部的事先批准，不得收购任何 A4 激光打印机竞争对手，不得加强安全阻止某些第三方的耗材产品，不得进行关于兼容性的虚假广告，不得从事非法捆绑销售。

**加阳 / 加拿大钾肥公司**：2017 年 11 月 6 日，商务部有条件地批准了加阳和钾肥公司的合并。商务部发现，加拿大钾肥公司已经是全球最大的氯化钾供应商，并确定合并可能会增加合并后的实体的市场力量，并削弱中国客户的抵消性买方力量。因此，商务部要求钾肥 ① 剥离其在三个小供应商在氯化钾市场的所有权 (以色列化工、阿拉伯钾肥和智利化工)；② 没有商务部的事先批准，不得在五年内并购任何其他钾肥竞争对手的份额；③ 放弃管理权利，



was below 30 percent in the market for outsourced semiconductor assembly and testing, MOFCOM concluded that the transaction would give rise to competition concerns and therefore imposed a severe two-year “hold-separate” condition. Under the hold-separate condition, ASE and SPIL must remain as independent competitors and are prohibited from changing their current business models or market practices in terms of management, finance, human resources, pricing, sales, production and procurement. This case is MOFCOM’s fifth hold-separate behavioral decision since the AML came into effect in 2008, and its first since 2013 when senior officials acknowledged the shortcomings of such decisions.

*Becton Dickinson/Bard*: On December 27, 2017, MOFCOM conditionally approved the acquisition of Bard by Becton Dickinson. In its review, MOFCOM raised competition concerns in the Chinese market for soft tissue core needle biopsy. In line with similar decisions in the US and EU, MOFCOM conditioned its approval on the divestiture of Becton Dickinson’s global soft tissue core needle biopsy product line, including relevant pipeline products under R&D, as well as the relevant assets.

### *Penalty for Failure to Notify*

In 2017, MOFCOM continued to penalize failures to notify in cases of notifiable transactions by issuing six additional penalty decisions. Five of these cases involved an international company. In terms of deal structure, half of these concerned the establishment of a joint venture. As evidenced by these joint venture cases, just obtaining a business license or a certificate of incorporation for joint ventures without first obtaining MOFCOM’s clearance is a violation of the AML, even in the absence of any other concrete steps taken to start operation of the business. Two cases were multi-step acquisitions, which were treated as one consecutive transaction as they work towards the same purpose, which is to ultimately transfer control to one entity. Under such a deal structure, if the combined turnover of the ultimate acquirer and the target exceed the filing thresholds, the deal is subject to notification as early as the first-step transaction, which cannot be consummated without MOFCOM’s approval.

### *NDRC Enforcement Activity*

During 2017, the NDRC continued to focus on conduct in industries producing goods and services deemed essential to the general public or sectors linked to domestic industrial manufacturing output. The NDRC also published Notice No. 790 announcing its intention to focus on illegal fee charging practices in government sectors and key service industries, including aviation, cargo and railway transport, telecommunications providers and financial services.

In line with this policy, the NDRC conducted probes into both the practices of shipping companies and port operators. In March the NDRC announced that 18 shipping companies would voluntarily lower their terminal handling charges

following an industry-wide probe into pricing conduct. The probe was commenced when the China Shipping Association filed a complaint, claiming that shipping companies had agreed to implement (and then increase) terminal handling charges anti-competitively. The NDRC reported that these cuts in terminal handling fees were expected to help import and export firms save an estimated RMB 4.6 million collectively on an annual basis.

Subsequently, the NDRC also commenced an abuse of dominance probe into shipping port operators in Shanghai and Tianjin in April. And in September the NDRC, together with the Ministry of Transport and the China Ports Association, summoned 39 port operators to a meeting. The regulator demanded that the port operators conduct a self-inspection exercise and implement measures to rectify the following anti-competitive practices: ❶ restricting logistics firms from using tugboat, tally, and shipping agency services from any party other than the subsidiaries of the operators, ❷ charging excessive international transshipment container handling fees and ❸ imposing unfair terms on their contractual partners, such as clauses that require shipping companies to ensure that their shipping fees are not higher than those of nearby shipping ports. Nineteen of the 39 port operators subsequently submitted rectification plans to the NDRC and Shanghai International Port, Tianjin Port, Ningbo Zhoushan Port, and Qingdao Port in particular indicated they would lower their fees in 2018.

In 2017, the NDRC also continued to pursue enforcement against price distortion in the domestic pharmaceutical markets. On August 15, 2017, the NDRC fined two domestic pharmaceutical companies, Zhejiang Second Pharma and Tianjin Handewei Pharmaceutical, for abuse of market dominance in relation to isoniazid active pharmaceutical ingredients (APIs). The two firms held a combined domestic share exceeding 66 percent giving them market power. The NDRC found that the two firms abused their market dominance by selling APIs at excessive prices in 2017 that were more than 3.5 times the price in 2016. The NDRC imposed fines of RMB 289,516 (US \$43,0078) and RMB 154,400 (US \$23,087) on Zhejiang Second Pharma and Tianjin Handewei Pharmaceutical. This decision reinforces China’s focus on the pharmaceutical sector and is the latest in a string of enforcement actions following the drug price reforms implemented in 2015.

Also relating to enforcement practice in the pharmaceutical sector, one of NDRC’s provincial counterparts fined a local pharmaceutical company, Weifang Longshunhe Pharmaceutical, for obstructing an investigation. An employee of the company threw a USB flash drive out of the building during an NDRC inspection. While the fine was fairly modest (RMB 120,000, approximately US \$17,000), it indicates a willingness by the NDRC to take action against those who refuse to cooperate with its investigations.

In 2017, the commodities and raw materials sectors were also of interest to the NDRC. In particular, the NDRC probed

限制股东在中国钾供应商的权利，至消极金融投资者的水平；④ 在每年的基础上，致力于保持氯化钾的出口水平，并继续其目前的销售实践。

**马士基航运公司 / 汉堡南美航运**：2017 年 11 月 7 日，商务部有条件地批准马士基航运公司收购汉堡南美航运。商务部发现，该交易将损害远东 / 南美西岸及远东 / 南美东岸航线对普通和冷藏集装箱运输的竞争。商务部需要几个条件，包括退出、不进入和 / 或不更新某些航线共享协议，将航运能力降低到 40% 以下，并在接下来的 3 年保持这样的市场份额。

**日月光半导体制造股份有限公司 (ASE) / 矽品精密工业股份有限公司 (SPIL)**：2017 年 11 月 24 日，商务部有条件批准 ASE 收购 SPIL。尽管事实是，在外包的半导体组装和测试市场上，中国的市场市场份额低于 30%，但商务部得出结论称，这一交易将引发竞争担忧，因此，实施了一项严重的两年“隔离”条件。在隔离的情况下，ASE 和 SPIL 必须作为独立的竞争对手，并且在管理、财务、人力资源、定价、销售、生产和采购等方面禁止改变现有的商业模式或市场惯例。这是商务部自 2008 年反垄断法生效以来做出的第五个，也是自 2013 年高层意识到这类决定弊端以来的首个独立行为决定。

**贝迪医疗 / 巴德**：2017 年 12 月 27 日，商务部有条件地批准贝迪收购巴德。在审查中，商务部提出了中国市场对软组织核心穿刺活检的竞争担忧。在美国和欧盟的类似决定中，商务部决定对贝迪医疗的全球软组织核心穿刺活检产品线进行剥离，包括研发相关的管道产品，以及相关资产。

### **对未依法申报的处罚**

2017 年，商务部继续对未依法进行交易申报的主体进行处罚，又发布了 6 项处罚决定。其中 5 例涉及合资企业。上述合资企业案件证明，仅获取合资企业营业执照或公司注册证，而未事先获得商务部的相关许可属于违反《反垄断法》的行为，即便并未采取其他任何实际行动开始营业。两个案例是多步骤的收购，被视为连续的交易，因为它们的目的是相同的，即最终将控制权转移给一个实体。在这样的交易结构下，如果最终收购者的交易额总和和目标超过了备案门槛，交易就会在第一步交易中提前通知，如果没有商务部的批准，交易就不能完成。

### **发改委的执法工作**

2017 年，国家发改委继续将重点放在对一般公共部门或与国内工业生产有关行业至关重要的产品和服务行业。发改委还发布了第 790 号公告，宣布将重点关注政府部门和重点服务行业的非法收费行为，包括航空、货运和铁路运输、电信运营商和金融服务。

根据这一政策，发改委对航运公司和港口运营商的做法进行了调查。3 月，国家发改委宣布，在对价格行为进行全行业调查后，18 家航运公司将自愿降低码头处理费。当中国航运协会提起诉讼时，调查开始，声称航运公司已经同意执行（然后增加）反竞争的码头处理费。国家发改委报告说，这些码头处理费的削减有望帮助进出口公司每年节省约 460 万人民币。

随后，国家发改委于 2017 年 4 月开始对上海和天津的船舶港口运营商进行垄断调查。2017 年 9 月，国家发改委与交通运输部、中国港口协会共同召集 39 家港口运营商参加会议。监管机构要求港口经营者进行自我检查，并采取纠正以下反竞争行为：① 限制物流公司使用除运营子公司外的任何一方提供的拖船，理货，和船舶代理服务；② 收取过高的国际转运集装箱装卸费用；③ 对其合作伙伴强加不公平条款，如条款要求航运公司确保他们的运输费用不高于附近的航运港口。在 39 家港口运营商中，有 19 家随后向发改委提交整改计划，特别是上海国际港口、天津港口、宁波舟山港和青岛港，表示它们将在 2018 年降低费用。

2017 年，国家发改委还继续对国内药品市场的价格扭曲进行执法。2017 年 8 月 15 日，国家发改委对两家国内制药公司浙江新赛科药业有限公司和天津汉德威制药公司进行了罚款，罪名是滥用异烟肼原料药。这两家公司的国内市场份额超过 66%，市场力量大。发改委发现，这两家公司在 2017 年以超过 3.5 倍的价格出售原料药，滥用其市场支配地位。国家发改委对浙江新赛科药业有限公司和天津汉德威药业分别处以 289516 元人民币（43,0078 美元）和 154400 元人民币（合 23,087 美元）的罚款。这一决定强化了中国对制药行业的关注，也是 2015 年实施药品价格改革后一系列执法行动中的最新一例。

与此同时，省发改委对当地一家制药公司——潍坊隆舜和医药有限公司以阻挠调查为由处以罚款。在国家发改委的检查中，该公司的一名员工将一个 U 盘扔出了大楼。尽管罚款数额相当有限（120000 元人民币，约合 17000 美

a series of 13 price-fixing agreements entered into among 18 PVC manufacturers between March and December 2016. The 18 PVC manufacturers were fined a total of RMB 457 million (approximately US \$69 million) for price fixing. The individual fines levied were also substantial, with Xinjiang Zhongtai Chemical paying the largest individual fine at RMB 71.11 million (approximately US \$10.65 million).

The NDRC's continued focus on the conduct of domestic players in domestic industries that have substantial impacts on Chinese consumer and Chinese industries is apparent from its enforcement activities in 2017.

### *SAIC's Enforcement Activities*

Like the NDRC, the SAIC also targeted sectors closely tied to public well-being, including medicine, tobacco, radio and television broadcasting, insurance, gasoline, natural gas, power supply, computer software, furniture, household appliances and food packaging. In particular, the SAIC pursued 443 investigations and imposed sanctions of RMB 190 million (approximately US \$29 million) in the public utilities sector between April and October 2017. At the national level, the SAIC also conducted 18 investigations, ten relating to cartels while eight concerned abuse of dominance. SAIC also announced that it was making steady progress in its probe of Microsoft for suspected abuse of dominance. That investigation is expected to be concluded by the end of 2018.

### *Legislative Progress*

#### *Revised Draft for Comment of Measures for the Review of Undertaking Concentrations*

There were a number of important legislative developments in 2017. Most notably, in September the Revised Draft for Comment of Measures for the Review of Undertaking Concentrations ("Draft Measures") under the AML were released. The Draft Measures will bring much needed clarification in the merger control rules and AmCham China urges MOFCOM to continue to improve the transparency and efficiency of the review process.

In particular, Article 6 of the Draft Measures identifies the factors that MOFCOM will consider in determining whether an undertaking has acquired control or "decisive influence" over another undertaking. These include voting rights, similar rights and interests, as well as the acquirer's influence on the other undertaking's operational decision-making and management, such as the power to appoint and dismiss senior management and decide on financial and operational plans. Article 7 lists further factors that shall be considered to make a determination of control. This includes reference both to the transaction and organizational documents, as well as the transaction rationale, shareholding structure, conduct during shareholders meetings and decision-making at the board level, but this list is non-exhaustive and, as is typical of Chinese regulatory practice, there is a

catch-all provision that gives MOFCOM plenary discretion to consider all "other relevant factors." There is no requirement for "lasting control" or "full functionality," meaning that even joint venture contracts that would not result in any structural changes in the market would be subject to the Draft Measures.

While we recognize the importance of flexibility and the ability to take a case-by-case approach, companies would benefit from greater certainty as to how the rules would apply in different scenarios, especially given the lack of publicly available precedents in China.

The Draft Measures' provisions on the method of calculating the turnover of undertakings are also welcome improvements. However, AmCham China urges greater clarity in the geographical allocation of turnover data. Article 11 of the Draft Measures explains that turnover "in China" means "the place where the buyer of the products or services provided by the place of registration of the undertaking," but this does not fully address the approach that should be taken in complex cases where, for example, due to industry practice, companies may bill to Chinese subsidiaries of multinational companies but in fact ship the finished goods overseas to a parent entity located in the U.S. The Draft Measures also do not address how turnover should be calculated in e-commerce and online trading platforms cases. AmCham China therefore recommends that further practical scenarios should be included to add further clarity in this regard.

Finally, as discussed above, there has been tremendous improvement in the efficiency of the merger review process, and the Draft Measures could be a significant tool to further accelerate the review process. Article 25 in particular provides for the "completeness" review, during which MOFCOM will review the filing made by the parties and request supplemental information. However, the Draft Measures, like its predecessors, do not specify any time constraints on the completeness period, leaving the notifying parties in a "black box." This lack of guidelines creates deal uncertainty for parties especially in complex transactions that require regulatory approvals in multiple jurisdictions, as difficulty in predicting the length of MOFCOM review can lead to undesirable inconsistency between the different regulatory timelines.

While the Draft Measures certainly represent a significant step forward to clarify the implementation of the AML, AmCham China hopes that the Draft Measures can be further revised to increase the level of transparency and efficiency in the merger review process.

#### *Anti-Monopoly Guidelines on Abuse of Intellectual Property Rights (Draft for Comments)*

A hot topic in 2017 was the impact of intellectual property rights on competition and the relationship between innovation and competition. The AML currently does not deal with exercises of intellectual property rights that may result in an

元)，但它表明，发改委愿意对那些拒绝配合调查的人采取行动。

2017年，中国国家发改委也对大宗商品和原材料行业感兴趣。特别是，国家发改委在2016年3月至12月期间，对18家聚氯乙烯（PVC）生产商签订了13项价格固定协议。18家PVC制造商因价格调整被罚款4.57亿人民币（约6900万美元）。征收的个人罚款金额也相当可观，其中新疆中泰化学的个人罚款金额最高，为7110万元人民币（约1065万美元）。

中国国家发改委对国内行业领域国企的持续关注，对中国消费者和中国行业产生了持续的影响，这从2017年的执法活动来看，无疑是显而易见的。

### 国家工商管理总局的执法工作

与国家发改委一样，国家工商管理总局（现已划归为国家市场监督管理总局）也瞄准了与公共福利密切相关的行业，包括医药、烟草、广播和电视广播、保险、汽油、天然气、电力供应、电脑软件、家具、家用电器和食品包装等。特别是在2017年4月至10月期间，国家工商管理总局对公共事业领域进行了443项调查，并对其实施了1.9亿元人民币（约2900万美元）的制裁。今年在国家层面，工商管理总局还进行了18项调查，10项与卡特尔有关，8项涉及滥用支配地位。工商管理总局宣布，正稳步推进对微软涉嫌滥用市场支配地位的调查。调查预计将在2018年底得出结论。

### 立法进展

#### 关于审查并购措施的修订草案

2017年有一些重要的立法发展。最值得注意的，是在2017年9月，《反垄断法》修订的《关于审查并购措施的修订草案》（“措施草案”）发布。该草案将明确迫切需要的并购管控规定，商会促请商务部能继续提高审查过程的透明度和效率。

特别是，草案第6条明确了商务部在决定一家企业是否获得控制权或对另一企业产生“决定性影响”的考虑因素。这些包括，投票权，类似的权利和利益，以及收购方对其他企业的经营决策和管理的影响，例如，任命和解雇高级管理人员的权力，决定财务和业务计划。第7条列出了确定控制权的进一步因素。包括参考交易和组织文件，交易原理、股权结构、行为在股东大会和董事会的决策方面。

但是这个列表是非详尽的，商务部的典型做法是，有一个笼统规定，商务部全体谨慎考虑所有“其他相关因素”。对“持续控制”或“充分发挥作用”没有要求，这意味着即使是不会导致市场发生任何结构性变化的合资协议也在草案的适用范围。

虽然商会认识到灵活性和采取个案处理方法的能力的重要性，但公司将从更确定这些规则将如何适用于不同的情况中获益，尤其是考虑到中国缺乏公开的先例。

本办法草案对经营者营业额计算方法的规定也作出改善。然而，商会促请进一步明确营业额数据的地域分配。第十一条的规定草案解释营业额“在中国”是指“企业注册地提供买方产品或服务的地方”，但这并没有完全解决复杂情况下应采取的方法，例如，由于行业惯例，公司可能会向跨国公司的中国子公司支付账单，但事实上，却将制成品运往位于美国的母公司。该草案也不涉及如何在电子商务和在线交易平台上计算收入。因此，商会建议，还应包括进一步的实际情况，以便进一步确认。

最后，正如上面所讨论的那样，并购审查过程的效率有了巨大的提高，而草案可以成为进一步加速审查进程的重要工具。第25条特别规定“完整性”审查，商务部将审查当事各方提出的申请，并要求补充资料。但是，像之前的规定一样，草案没有规定完整期间的任何时间限制，将通知方置于在“黑盒”中。这种缺乏指导原则为各方带来了交易的不确定性，尤其是在复杂的交易中，需要在多个司法管辖区获得监管批准，因此，难以预估的商务部审查时间可能会导致不同监管时间线之间的前后冲突。

虽然这些措施草案显然是明确执行《反垄断法》的重要步骤，但商会希望，可以进一步修订草案，以提高合并审查过程的透明度和效率。

#### 关于滥用知识产权的反垄断指引（征求意见稿）

今年的热门话题是知识产权对竞争的影响以及创新与竞争的关系。《反垄断法》目前不处理可能导致消除或限制竞争的知识产权的活动。国务院关于滥用知识产权（征求意见稿）的反垄断指导方针（征求意见稿）是为了在这方面提供指导而制定的。第1和2条的规定，知识产权指南提供一个分析框架来评估与知识产权相关的行为对竞争的影响，并概述了一个特定事实的个案处理的方法，考虑行为的特点，行为对创新和竞争潜在的积极影响，知识产权的独特性质，行为在特定的相关市场竞争的影响。然而，

elimination or restriction of competition. The State Council's Anti-Monopoly Guidelines on Abuse of Intellectual Property Rights (Draft for Comments) (IP Guidelines) were developed to provide guidance in this regard. Articles 1 and 2 of the IP Guidelines provide an analytical framework to assess the impact of IP-related conduct on competition and outline a fact-specific case-by-case approach, which takes into account the characteristics of the conduct, the potential positive impact the conduct may have on innovation and efficiency, the unique nature of the IP right, and the effect of the conduct on competition in the specific relevant market. However, while this overarching framework importantly acknowledges that possession of particular IP rights does not necessarily lead to a dominant market position, the IP Guidelines' focus on relative access to IP rights (as opposed to actual market power) poses risks for foreign players with significant IP.

Article 4 (1) of the IP Guidelines includes "degree of reliance on relevant IP rights of trade counterparties" as a factor to be considered in analyzing an exclusionary or restrictive effect on competition. Similarly, Article 15 states that refusal by a dominant player to license its IP rights without justifiable cause may be considered an abuse of dominance. Ownership of a desirable IP right and the ability to drive a hard bargain when granting access to this right may not necessarily reflect a dominant market position; it is simply a reflection of relative negotiating strength. Moreover, the granting and terms of IP licenses and similar IP access rights is a contractual matter for negotiation between the market players themselves. Given the subjective nature of this analysis, there are inherent risks from government intervention into this commercial area. Further, IP rights are inherently intended to grant inventors the ability to exclude others from enjoying the fruits of their innovation efforts and thereby incentivize R&D investments. Therefore, excessive regulatory interference with this right to exclude may instead harm innovation in the long-term and disincentivize market players from seeking out advantageous IP positions. We would recommend that the IP Guidelines specify clearly the circumstances under which a refusal to license may be considered an abuse of dominance and narrowly tailor the circumstances under which such refusals would be considered to lack justifiable cause. Without these qualifications, the IP Guidelines effectively give Chinese antitrust regulators the tools to compel foreign players to grant domestic players access to their IP for industrial policy reasons which is fundamentally inconsistent with repeated declarations by senior officials that they intend to strengthen IP protection for foreign investors.

In addition, it is unclear how these IP Guidelines will apply to merger control. Article 20 only states that where a concentration significantly involves IP rights, the characteristics of the IP rights should also be considered in addition to Article 27 of the AML. We would recommend further clarification as to what type of characteristics will be considered as having an effect on competition. It is unclear when or how R&D

or "technology" markets will be defined and how innovation market shares should be estimated. While Article 4(1) provides three ways to calculate market shares in upstream technology markets, again it does not explain when each method would be preferable over the others and adopts a case-by-case approach. This flexibility gives broad scope to MOFCOM to impose behavioral remedies in IP intensive transactions and require foreign players with supposedly "high" shares in vaguely defined technology markets to grant IP licenses or more to domestic players.

Against the backdrop of rising interest in IP rights and innovation from antitrust regulators globally, we welcome the introduction of the IP Guidelines as a positive step in the right direction to clarify the sensitive relationship between IP rights and competition. However, AmCham China recommends that the IP Guidelines make clear that mere exercise of IP rights does not raise competition issues unless the IP right holder has the power to control price or exclude competition as a result of its ownership of the IP.

## Ongoing Regulatory Issues

### *Exclusion of Foreign Counsel*

In the absence of implementing regulations, since the AML came into effect over a decade ago, foreign counsel has often been barred or discouraged from attending meetings with the AMEAs. As discussed above, MOFCOM in particular has increasingly rejected the attendance of international counsel this year in merger review meetings, in violation of China's commitments under the 2014 US-China JCCT.

This has been true even when the lawyers in question are accompanied by local counsel and are not engaging in the practice of Chinese law. This is inconsistent with international practice in which parties are routinely permitted to instruct international counsel and local counsel to appear together before competition authorities, thus ensuring more efficient communication of evidence and analysis across jurisdictions.

Granting foreign counsel the ability to meet with relevant authorities provides an important and beneficial aid to the AMEAs, particularly as mergers are often global and cartel conduct increasingly extends across borders. AmCham China encourages the AMEAs to formally and faithfully implement China's JCCT commitments in binding guidelines, safeguarding the right of companies to representation by counsel of their choice.

### *Industrial Policy and Protectionism*

Most provisions of the AML seek to promote consumer welfare and economic efficiency. Nevertheless, concerns persist that the AML may sometimes be used to promote "national champions" and "indigenous innovation" while shielding domestic markets from foreign competition. This

重要的一点是，尽管这一总体框架承认，拥有特定的知识产权并不一定会导致市场占据主导地位，但知识产权指导方针的重点是相对于知识产权的相对获取（而不是实际的市场力量）对有具有重大知识产权的外商构成风险。

第 4(1) 条的知识产权准则包括将“对交易对手的相关知识产权的依赖程度”作为分析排外或限制竞争的一个影响因素。类似地，第 15 条规定，在没有正当理由的情况下，由占支配地位的商家拒绝授权其知识产权的行为，可能被认为是一种滥用支配地位的行为。拥有令人满意的知识产权，以及在授予该权利的过程中能够讨价还价的能力不一定反映出市场的主导地位，只是相对力量的反映。此外，知识产权许可和类似的知识产权访问权的授予和条款是市场参与者自己之间协商的合同问题。鉴于这种分析的主观性质，政府介入这一商业领域存在固有的风险。更重要的是，知识产权的初衷是为了让发明者能够排除他人享受其创新成果，从而激励研发投资。因此，对这种排他性的过度监管干预可能会损害长期的创新，不利于市场参与者寻找有利的知识产权位置。商会建议，知识产权准则明确规定，拒绝许可证可能被认为是一种滥用支配地位的情况，并交叉地规定这种拒绝被认为是缺乏正当理由的情况。如果没有这些资质，知识产权指导方针有效地给了中国反垄断监管机构一些工具，迫使外国商家出于产业政策的考虑允许国内商家获取他们的知识产权，这显然与高层反复声明的致力于维护外国投资者知识产权的说法相悖。

此外，目前还不清楚这些知识产权指引如何适用于并购控制。第 20 条仅指出，涉及知识产权的并购，除《反垄断法》第 27 条外，还应考虑到知识产权的特点。商会会建议进一步明确什么类型的特征会被认为对竞争有影响。目前尚不清楚何时或如何界定研发或“技术”市场，以及如何评估创新市场份额。虽然第 4(1) 条提供了三种方法来计算上游技术市场的市场份额，但并没有说明每种方法何时相较于其他方法更可取，以及如何适用个案。这种弹性为商务部在知识产权密集型交易中实施行为补偿提供了广阔的空间，并要求外国商家在模糊定义的技术市场中拥有“高”份额，以向国内商家授予知识产权许可或更多技术。

在全球反垄断监管机构对知识产权和创新的兴趣日益高涨的背景下，商会欢迎知识产权指引的推出，这是向正确方向迈出的积极一步，明确知识产权与竞争之间的敏感关系。然而，商会建议知识产权准则明确指出，除非知识产权权利人有权控制价格或排除竞争，否则知识产权的行使不应引发竞争问题。

## 现存监管问题

### 排斥外国律师

由于没有颁布实施条例，自《反垄断法》生效十多年以来，外国律师经常被禁止或不鼓励与反垄断执法机构一起参加会议。正如上面所讨论的，中国商务部在今年的并购审查会议上，越来越多地拒绝了国际律师的出席，这违反了中国在 2014 年美中商贸联委会的承诺。

即便在有中国律师事务所的本地律师陪同且不寻求在中国执业的情况下，这一点也是真实发生的。这一做法不符合国际惯例，国际上的通行做法是，允许当事人要求所聘请的国际律师和本地律师一同会见竞争监管部门，从而确保更加高效地传达不同司法管辖区的证据和分析。

允许外国律师与相关部门会面，将对反垄断执法机构的执法活动提供重要且有益的帮助。特别是在卡特尔行为日益呈现国际化趋势的背景下。商会鼓励反垄断执法机构正式坚定地执行美中商贸联委会承诺，出台有约束力的指南，保障各方自主选择代理律师的权利。

### 产业政策和保护主义

反垄断法的大部分条款旨在保护消费者权益和经济效能。尽管如此，人们仍然担心反垄断法会被用来促进“国家领先”和“自主创新”，同时保护国内市场不受外国竞争的影响。这在某种程度上表明，中国是几宗引人注目的合并案件中唯一的司法管辖区，对中国的竞争对手给予了额外的保护。这种做法对那些称得上很好的合作伙伴的美国企业来说是不公平的，阻碍创新的同时也加剧了贸易紧张局面。商会促请中国和跨国公司之间保持中立和公正的监管，专注于真正的竞争问题，而不是在执行中过于重视产业政策。

### 提高透明度

透明且可预期的执法使得广大企业能够制定符合《反垄断法》的商业战略。实施细则、主管机关的解释性指导意见以及反垄断执法机构和法院公布的决定对此起着关键性作用。公布执法决定能够为企业提供指导，教育企业遵守法律。

商务部基于“共识”的审查介绍了并购控制过程中相当大的不确定性和不透明度，尤其是商务部从工信部等政府部门和利益相关者，如私人公司和贸易协会等征求意见

was, to some extent, demonstrated by the fact that China was the only jurisdiction in several high-profile merger cases that imposed restrictive conditions, which give extra protection to the Chinese competitors to the parties seeking clearance. This approach is unfair to American companies who are good corporate citizens in China, and also deters innovation while fueling trade tensions. AmCham China urges the AMEAs to be neutral and impartial regulators between Chinese and multinational companies, focusing on genuine competition issues rather than placing disproportionate weight on industrial policies in enforcement.

### *Increasing Transparency*

Transparent and predictable enforcement allows companies to plan commercial strategies that comply with the AML. Implementing regulations, interpretive guidelines from regulators, and the publication of decisions of AMEAs and courts are critical to these efforts. Published decisions provide guidance and an opportunity to educate companies about compliance.

MOFCOM's focus on "consensus based" review introduces considerable uncertainty and opacity into its merger control process, as MOFCOM solicits input from other government ministries such as MIIT and stakeholders such as private companies and trade associations, and will not be able to complete its review until such input has been provided. Some of these stakeholders appear to abuse their positions as key input providers by ignoring MOFCOM's own internal deadlines and attempting to play a decisive role in merger control review while shielding their actions behind the confidentiality rules in place relating to the stakeholder input solicitation process.

AmCham China urges that MOFCOM be given the ability to complete its merger control review process without undue delay and interference from other stakeholders when those stakeholders have been given a full and fair opportunity to comment and give input but have failed to provide comments within a reasonable time frame.

### *Due Process*

AmCham China recommends that clear guidelines and measures for redress be made available as soon as possible to ensure that both domestic and multinational undertakings under investigation or review have:

- Clear identification of issues and the opportunity to defend;
- The right and practical access to domestic and international legal counsel;
- Notification of the express legal and factual basis for any investigation;
- Direct and meaningful engagement between the parties, the investigative staff, and decision makers; and

- Internal checks and balances on decision making within the enforcement agencies.

## Recommendations

### *For the Chinese Government:*

- **Issue formal guidelines confirming that foreign-qualified lawyers (i.e., PRC-qualified lawyers working in foreign law firms) and foreign counsel are allowed to attend meetings and investigations of all three agencies, alongside local counsel, to implement China's JCCT commitment.**
- Focus on genuine competition issues and streamline the review or investigation process
- Remain impartial between domestic companies and their foreign competitors
- Refrain from compromising IP rights in the name of AML enforcement
- Release and implement clear guidelines on AML enforcement, including safe-harbor provisions and bright-line rules.
- Publish and guarantee due process rights of companies under review or investigation.
- Provide MOFCOM with effective tools to be able to complete its reviews without undue delays from uncooperative industry stakeholders and government agencies.

的过程；在不提供此类意见前将无法完成评估。其中一些利益相关者似乎在滥用他们作为关键意见提供者的地位，忽略了商务部自己的内部最后期限，并试图在并购控制审查中发挥决定性作用，同时在与利益相关者征求意见过程相关的保密规则背后屏蔽他们的行动。

商会建议商务部有能力及时完成并购控制审查过程，不受未能在合理的时间内提供评论的利益相关者的干扰。

## 程序正义

商会建议发改委尽快制定明确的救济指导意见和措施，确保接受调查或审查的内资企业或跨国公司：

- 明确知晓问题之所在并有机会抗辩；
- 有权并且能够实际征求国内和国际法律顾问的意见；
- 被明确告知调查的法律和事实依据；
- 相关方与调查人员和做出决定的部门直接进行有意义的接触；
- 执法机构内部在做出决定方面应建立内部制衡机制。

## 建议

### 对中国政府：

- 兑现中国在美中商贸联委会上做出的承诺，发布明文规定，明确允许合格的外国律师（包括在外资律所工作的合格的中国律师）和法律顾问与本地法律顾问一同出席和参与三部委的会议和调查。
- 关注真正的竞争问题，简化审核或调查过程。
- 在国内公司和外国竞争者之间保持公正。
- 避免以执法的名义侵犯知识产权。
- 发布和执行关于反垄断法的明确准则，包括安全港条款和明线规则。
- 公布和保障被审查或调查企业享有程序正义权利。
- 为商务部提供有效的工具，使其能够在不受行业利益相关者和政府机构不当延误的情况下完成其审查。



# Compliance

## Introduction

**A**mCham China member companies face complex compliance concerns in China that are challenging to manage because of the opaque nature of the Communist Party of China's influence on government policies, as well as historically weak regulatory transparency. As has been well documented, US firms in recent years have been subjected to an increasingly broad array of investigatory actions under China's growing number of regulatory and enforcement measures. Such actions include regular investigations by authorities under the PRC Anti-Unfair Competition Law. From the viewpoint of US firms these actions often appear to be carried out to benefit China's domestic industrial policy goals.

More recently, new data compliance, data localization, and data privacy rules have been implemented without taking into account the cross border operational needs of foreign companies, which is beginning to have a serious impact on US companies. The trend lines are not positive: 81 percent of AmCham China member companies surveyed in our 2017 annual Business Climate Survey responded that they felt less welcome in China than in 2016.

We strongly urge Chinese authorities to focus on fairness and transparency regarding the implementation of laws, regulations and rules. China's rapid evolution has reached a stage where it asserts that it is now on the verge of opening most of its markets to fair and full competition, with equal treatment for all businesses operating within its borders. It is also a time when increasingly China is asserting global leadership.

## Ongoing Challenges and Recent Developments

### *Anti-Corruption Compliance*

In 2017, China greatly increased efforts to investigate corruption in both the public and private sectors. A new development slated for full implementation in 2018 is the reform of the Ministry of Supervision (see discussion below), which is set to exercise comprehensive anti-corruption enforcement powers after the rationalization of the roles and functions of different government agencies responsible for anti-corruption work.

Corruption not only involves potential civil and criminal liability, but may also tarnish a firm's reputation, damaging its business both in China and internationally. It is essential that companies operating in China adhere to local laws and regulations, as well as anti-bribery laws in their home jurisdictions, in order to avoid negative press or penalties. US companies and citizens must comply with local Chinese laws as well as the US Foreign Corrupt Practices Act. Below are a few of the key corruption-related issues raised by AmCham China member companies operating in China. This outline is not exhaustive, however, and US companies operating in China need to be alert to a wide variety of corruption and similar risks found in China's rapidly evolving commercial and legal environment.

### *Anti-Bribery Law Enforcement*

On November 4, 2017, the Standing Committee of the National People's Congress (NPC) issued the Decision on Conducting Pilot Work Regarding Reform of the Supervisory System Nationwide (Decision). The Decision launched pilot reform programs that established supervision commissions in 28 provinces and municipalities directly under the central government. The Decision was issued on the basis of previously-launched pilot programs in Beijing, Shanxi and Zhejiang, and expanded the scope of supervision from government officials to all persons exercising public authority. The Chinese government aims to build an integrated and more independent supervisory system by consolidating the powers spread across the judicial authorities (the procuratorates) and administrative authorities (supervision departments and corruption prevention bureaus), as well as the disciplinary inspection divisions of the CPC, into supervision commissions. It remains to be seen how US companies will be impacted by the enhanced anti-corruption government infrastructure and whether they will be subject to disciplinary inspections. In light of China's continuing focus on anti-bribery law enforcement, AmCham China members support additional clarity and consistency in regulatory enforcement and in the scope of responsibilities held by central- and local-level supervision commissions. Such efforts should include support for key components of the rule of law, including transparency, consistency in interpretation, and due process. Foreign investors rely on certainty and fairness when making investments in China, and a robust, balanced legal and regulatory environment improves the

# 合规

## 引言

**中**国美国商会（商会）的会员企业在中国面临复杂的合规问题，由于党对政府政策的影响力不够明确，监管缺乏透明度，因此处理这些问题较有挑战性。如前所述，在美国企业的角度来看，中国政府为实现国内产业政策目标，近年不断增加监管和执法工具，导致美国企业面临越来越多的更为广泛的调查行动。这些行动包括政府部门根据《中华人民共和国反不正当竞争法》所进行的定期调查。

最近，新的数据合规、本地化和隐私保护法规均开始实施，但这些法规并没有考虑到外国企业的跨境运营需求，并已经对美国企业的在华运营造成严重影响。此外，这样的趋势也未产生积极效果。在商会 2017 年度《营商环境调查报告》中，81% 的商会会员企业表示，他们感觉 2016 年在中国的受欢迎程度有所降低。

因此，商会促请中国政府重视法律法规实施的公平性和透明度。现在的中国经过快速发展，多次强调要进一步开放市场、促进公平、全面竞争，并对在其境内运营的所有企业一视同仁。商会认为，现在正是中国展现全球领导力的好时机。

## 现存监管挑战及最新发展

### 反腐败法规

2017 年，中国加大了对政府和私营企业腐败的调查力度。最新的进展是政府反腐部门监察部的改革（详见下文），并预计在 2018 年开始全面实施。这项改革旨在捋清负责反腐工作不同政府机构的权责后，由监察部行使全面的反腐败执法权。

腐败行为不仅会引发民事和刑事处罚，还会损害公司声誉，影响公司在中国和国际市场的业务。在中国经营的

公司必须了解当地法律法规，及中国实施的反贿赂法规，做到遵纪守法，避免出现负面新闻或遭受处罚。美国公司和公民必须遵守中国的法律和美国的《反海外腐败法》。以下是商会会员企业提出的部分与腐败有关的关键问题，并未涵盖所有问题。在迅速发展的中国商业和法律环境下，在华经营的美国公司应对多种腐败和相关风险保持警惕。

### 反贿赂法律的实施

2017 年 11 月 4 日，全国人民代表大会常务委员会（“全国人大”）发布了《关于在全国各地推开国家监察体制改革试点工作的决定》（以下简称《决定》）。这项《决定》启动了改革试点计划，在 28 个省和直辖市设立了监察委员会。该《决定》是在北京、山西、浙江等地启动试点项目的基础上作出的，扩大了政府官员对所有行使公共权力人的监督范围。中国政府的目标是建立一个统一的、更加独立的监督体系，将分散到司法机关（检察院）和行政机关（监督部门和反贪污贿赂总局），以及中国共产党的纪检部门的权力集中到监察委员会。然而，还有待观察的是得到强化的反腐机构建设将会如何影响美国公司，以及他们是否会受到纪律检查。鉴于中国持续加大反贿赂执法力度，商会的会员呼吁提高监管执法以及中央和地方各级监察委员会所承担的责任范围内的透明度和一致性。政府应对法治体系重要组成部分给予支持，包括提高执法透明度、促进法规揭示的一致性、保障正当程序等。外国投资者在中国投资期间，有赖于法律的确信性和公平性。建立强大、稳定而平衡的法制和监管环境有助于提高合规项目的效率，提升投资者信心。

### 《反不正当竞争法》修订版

2017 年 11 月 4 日，全国人大常务委员会发布了《反不正当竞争法》修订稿。除了其他事项外，中国的反商业贿赂条例也进行了修订，这些规定将加强与商业贿赂活动相关的监管。商会赞赏中国政府打击商业贿赂行为而做出的

effectiveness of compliance programs, bringing confidence to such investors.

### Amended Anti-Unfair Competition Law

On November 4, 2017, the Standing Committee of the NPC promulgated the amended Anti-Unfair Competition Law (AUCL). The AUCL revised, among other things, China's anti-commercial bribery rules, which are set to tighten regulation related to commercial bribery activities. AmCham China supports China's efforts to counter commercial bribery activities, which disrupt market order and result in uncertainties for companies doing business in China. AmCham China also welcomes China's stance of aligning its anti-corruption rules with the norms of other jurisdictions, as this makes it easier and less costly for companies operating in multiple jurisdictions to ensure compliance.

The AUCL redefined commercial bribery. First, the AUCL no longer lists the objective of selling or purchasing goods as an element of commercial bribery; instead, the provision of assets or adoption of other means for purposes of obtaining transactional opportunities or competitive advantages now constitutes commercial bribery. Second, the AUCL expanded the scope of bribe recipients from counterparties of transactions to three new categories of entities: employees of counterparties; entities and individuals entrusted by counterparties to handle relevant matters; and any entities or individuals that use their authority or influence to impact a transaction. The AUCL removed the provision or acceptance of improper benefits to or by the counterparty of a transaction from the definition of commercial bribery. However, the AUCL still requires that the parties to a transaction maintain an authentic record of discounts and commissions given and received. It should be noted that China's Criminal Law still penalizes the giving and taking of bribes by entities.

The AUCL now expressly imposes vicarious liability on employers. By contrast, the original Anti-Unfair Competition Law was unclear about vicarious liability, despite the fact the State Administration for Industry and Commerce has held employers accountable for bribery of their employees, both according to its rules and in practice. The AUCL establishes a presumption that acts of bribery by an employee will be deemed as tantamount to action committed by his or her employer, unless the employer can show that the activities of the employee are irrelevant to the employer's attempts to gain transaction opportunities or competitive advantages. However, the AUCL does not state what kind of evidence is sufficient for an employer to rebut such claims in the case of bribery by an employee. AmCham China member companies urge further clarification on this issue.

The AUCL increases the list of possible sanctions for violations of commercial bribery rules committed by businesses. Notably, the range of fines has been increased 10 times from RMB 10,000-200,000 to RMB 100,000-2,000,000, and under serious circumstances business licenses may be revoked. The

AUCL has not provided further clarification regarding the imposition of fines or the kind of "serious circumstances" that may lead to revocation of business licenses. This means that local administrations for industry and commerce (AICs) may have significant discretion in enforcement. In the past, such discretionary power in enforcement by local AICs has led to inconsistent enforcement across different regions. AmCham China urges State Administration for Industry and Commerce to restrict enforcement power regarding commercial bribery to provincial and municipal-level AICs, and to publish binding guidance and interpretations on commercial bribery.

### US Foreign Corrupt Practices Act and Other Corruption Laws

AmCham China member companies have continued to prioritize compliance with the Foreign Corrupt Practices Act (FCPA) and other corruption laws. Companies strive to design compliance and training programs to address risks. In-house professionals working to ensure a foreign company's global compliance face the difficult task of harmonizing different demands to address both global and local requirements. To foster international commerce and foreign investment, China should ensure that its bribery and corruption laws meet generally accepted international norms, and that these laws are applied transparently and without discrimination.

### Third-Party Compliance

Compliance with anti-bribery and anti-corruption (ABAC) and other rules by third parties, for example the activities of sales channel distributors and resellers, vendors, agents, consultants, customs brokers, and supply chain partners, is also a major concern for AmCham China member companies. It is essential that Chinese domestic business partners develop compliance programs that address key risks highlighted by corruption laws. AmCham China member companies note the noticeable progress SOEs have made in developing anti-corruption compliance programs, and encourage the agencies that oversee SOEs, including the State-Owned Assets Supervision and Administration Commission (SASAC), to continued improvements in SOE compliance programs. AmCham China also encourages the SAIC to define the scope of third party and vicarious liability regarding commercial bribery under the AUCL.

### Data Policy Compliance

China recognizes that the security and controllability of data is related to national security. Over the past two years, China has been developing a comprehensive legal regime that sets parameters for data security and privacy within mainland China. This regime consists both of the Cybersecurity Law and also other laws, regulations, rules and standards pre-existing and subsequent to the

努力，因为商业贿赂扰乱了市场秩序，给在华经商的企业带来了不确定性。商会也欢迎中国将反腐败规定与其他司法管辖区的规范统一的立场，因为这使得在多个司法管辖区运营的企业更容易以更低成本确保合规。

《反不正当竞争法》重新定义了商业贿赂。首先，不再将销售或购买商品的目标列为商业贿赂的一个要素；相反，现在为获取交易机会或竞争优势而提供资产或采用其他手段则构成商业贿赂。第二，《反不正当竞争法》将交易对手的贿赂对象范围扩大到三个新的类别：交易对手的员工；被交易对手委托处理有关事项的单位和个人；以及任何使用其权威或影响力影响交易的单位或个人。《反不正当竞争法》在商业贿赂的定义中剔除了向交易对手提供或收受交易对手的不当利益。然而，《反不正当竞争法》仍然要求交易双方保持折扣和佣金的真实记录。需要指出的是，中国的刑法仍授权政府对单位的行贿受贿行为进行处罚。

现在，《反不正当竞争法》明确了公司的替代责任。尽管国家市场监督管理总局根据其规定和实际情况规定公司对其雇主的贿赂行为负责，但相比之下，最初的《反不正当竞争法》对替代责任还不太清晰。除非公司认为雇员的行为与公司获取交易机会或竞争优势的意图无关，那么，《反不正当竞争法》就会认为雇员的贿赂行为等同于其雇主的行为。然而，《反不正当竞争法》并没有说明什么样的证据足以让雇主在雇员行贿的情况下反驳这种控诉。商会会员企业提请相关政府机构进一步澄清这一问题。

《反不正当竞争法》增加了可能的违反商业贿赂条例的制裁办法。值得注意的是，罚款的范围从10,000–200,000元增加到10–200万，在严重的情况下可以吊销营业执照。对于罚款或可能导致吊销营业执照的“严重情节”，《反不正当竞争法》没有进一步的解释。这意味着地方工商行政管理部门在执行方面可能有很大的酌处权，这在过去导致不同地区出现执法不一的情况。商会敦促国家市场监督管理总局将关于商业贿赂的执法权力限制于省市级工商行政管理机构，并发布具有约束力的商业贿赂指导意见和解释。

### **美国《反海外腐败法》和其他反腐败法**

商会的会员企业历来重视美国《反海外腐败法》和其他反腐败法律。这些公司致力于制定合规计划，开展员工培训，以减少合规风险。公司内部专业人员面临着如何协调外国公司全球合规文化，同时满足全球和地方合规要求

的难题。为促进国际商业和外商投资的发展，中国应确保其反贿赂和反腐败法律符合普遍接受的国际规范，确保这些法规在国内外都得到透明而公正的实施。

### **第三方合规**

第三方反贿赂反腐败合规包括销售渠道经销商与转售商、供应商、代理商、顾问、报关经纪人和供应链合作伙伴的活动，也是商会重点关注的领域。中国国内商业伙伴必须制定合规计划，防范反腐败法规造成的重要风险。商会赞赏中国国有企业在制定反腐败合规计划方面所取得的显著进展，鼓励国有资产监督管理委员会等国有企业监管机构继续完善国有企业合规计划。商会还鼓励国家市场监督管理总局对《反不正当竞争法》草案商业贿赂第三方责任范围和替代责任范围给予明确的阐释。

### **数据政策合规**

中国认识到，数据的安全性和可控性与国家安全有关。过去两年，中国建立了全面的法律机制，确定了中国大陆数据安全与隐私制度。这一新机制包括网络安全法和其他相关法律法规，以及网络安全法存在前后的标准，为跨国公司和外国中小型企业带来了合规难题。该机制注重通过数据本地化和数据出口安全评估来控制数据，以及通过管理个人数据的收集、存储、使用、处理和销售来保护数据隐私。为贯彻执行法律机制规定的要求，国家互联网信息办公室、行业监管机构、地方政府和标准化机构已发布或将发布更多的行业规范和地方性法规草案。然而，如仍以目前的形式实施，这些法规将为跨境运营的公司带来繁重的数据合规责任。此外，为了加强网络安全计划，中国正在改革其数十年的加密监管制度，因此在2017年发布了《加密法草案》。如果以目前的形式执行，这类法律将进一步限制外国参与加密领域，并在进口和使用外国加密方面造成不确定性。

### **《网络安全法》**

2017年6月1日起实施的《网络安全法》是一项综合性法律，涉及网络安全的所有主要方面，包括网络系统和设施、网络产品和服务、实名注册、网络攻击、加密、数据本地化、数据隐私和关键信息基础设施的保护等。其中，关键信息基础设施受到《网络安全法》严格的监管。然而，哪些实体（包括外资企业）将被视为关键信息基础设施这个重中之重的问题仍有待解决。此外，《网络安全法》和相关的执行规则或标准对“网络运营商”（即所有通过网络

Cybersecurity Law, which creates challenges in compliance for multinational corporations (MNCs) and foreign small and medium-sized enterprises alike. The legal regime focuses on the control of data through data localization and data export security assessment, as well as on the protection of data privacy by regulating the collection, storage, use, processing and sale of personal data. To implement the requirements as outlined in the general legal regime, the Cyberspace Administration of China (CAC), industry regulators, local governments and standardization institutions have issued or will be issuing more sector-specific and local draft rules and standards. However, if these are enacted in their current forms, they will create onerous data compliance obligations for companies operating cross-border. In addition, as part of its efforts to strengthen cybersecurity, China is reforming its decades-old encryption regulation regime and consequently issued the Draft Encryption Law in 2017. If implemented in its current form, such law will further restrict foreign participation in the encryption sector and create uncertainties for compliance in the import and use of foreign encryption.

### Cybersecurity Law

China's Cybersecurity Law took effect on June 1, 2017 and is an omnibus law that addresses all major aspects of cybersecurity, including network systems and facilities, network products and services, real-name registration, cyber-attacks, encryption, data localization, data privacy and protection of critical information infrastructures (CIIs). The Cybersecurity Law subjects CIIs to stringent regulatory requirements. However, the all-important issue of which Chinese entities, including foreign-invested companies will be deemed CIIs is still to be resolved. Further, the Cybersecurity Law and related implementing rules or standards impose onerous compliance obligations on "network operators," namely all entities that operate through networks. Obligations in connection with data localization and cross-border data transfer security assessment remain unclear, as implementing regulations and standards have yet to be finalized.

The Cybersecurity Law and other mandatory data-related rules have broad scope and stipulate rigorous requirements for data collection, storage and transfer. This has created significant compliance challenges and uncertainty for both domestic and foreign companies in a large number of industry sectors. Many core concepts of the law, such as "network operators," "important data," "critical information infrastructures (CIIs)" and "personal information," are defined broadly and vaguely, meaning they are prone to being interpreted subjectively in relation to law enforcement. There is a risk that the undefined authority of enforcement agencies will result in repeat inspections, while inconsistent compliance standards of different enforcement agencies will add to the compliance burden of network operators. The security review provisions give the Chinese government access to many companies' core intellectual properties. AmCham

member companies are concerned whether their IP, trade secrets and other confidential information will remain confidential in this environment. There are also concerns that the Cybersecurity Law, as well as related laws and regulations, give the Chinese government broader surveillance powers in the commercial field than necessary. AmCham members also have concerns that the data localization provisions and restrictions on cross-border data transfers could have the effect of causing foreign companies to leave the China market altogether. Members also note that the requirements for network products and services to be "secure and controllable" are likely to promote the purchase of domestic products and services over similar foreign products.

### Data Privacy

Chapter Four of the Cybersecurity Law addresses the protection of personal information. Compliance with data privacy laws is complicated by the fact that statutory requirements relating to data privacy protection are found in existing laws and regulations at both national and provincial / municipal levels, as well as in judicial interpretations. The requirements contained in these laws and regulations are inconsistent in certain places. For example, Article 76 of the Cybersecurity Law defines "personal information" as "information that can be used separately or in combination with other information to identify a natural person," while interpretations issued by the Supreme People's Court and the Supreme People's Procuratorate define the scope of "personal information" to include information that "reflects the activities of a particular natural person."

The Cybersecurity Law adds some new requirements or exceptions to previous requirements. In the event of leakage, damage or loss of personal information, network operators must now notify data subjects in a timely fashion. Importantly, to prevent abuse of personal information collected by government agencies in the course of their supervisory activities, officials in charge of cybersecurity supervision and management must safeguard confidential personal information and privacy, and are prohibited from divulging, selling or illegally providing such information to a third party.

### Data Localization

Historically, China has not issued comprehensive policies regarding data localization. Other jurisdictions impose data localization requirements to some degree, but current data localization requirements in China, when combined with state security requirements, are indicative of a policy trend that goes beyond what is found, for example, in advanced industrialized countries. Such policies could hinder China's efforts to be a global leader in innovation, which generally depends on the free flow of information. Companies that transfer data cross-border will need to follow developments with regard to data localization closely to ensure that they comply with relevant regulations.

运营的实体)施加了繁重的合规义务。此外,鉴于执行条例和标准还尚待最终确定,与数据本地化和跨境数据转移安全评估有关的义务仍不清楚。

《网络安全法》和其他强制性的数据相关规则覆盖面广,对数据的收集、存储和传输都有严格的要求。这为大量行业领域的国内外企业带来了重大的合规挑战和不确定性。法律的许多核心概念,如“网络运营商”、“重要数据”、“关键信息基础设施”、“个人信息”等,均定义广泛而模糊,这意味着在执法过程中容易出现主观解读的情况。有一种风险是,执法机构权责不清可能导致重复检查,而不同执法机构的合规标准不一,增加了网络运营商的合规负担。此外,通过执行安全审查可能使中国政府获得许多公司的核心知识产权。商会会员企业担心在这种环境下,他们的知识产权、商业秘密和其他机密信息是否仍将保密。此外,《网络安全法》以及相关法律法规赋予中国政府在商业领域的超出所需更广泛的监控权力。商会的会员还担心,数据本地化的规定以及对跨境数据传输的限制将会导致外国公司离开中国市场。同时,会员也注意到对网络产品和服务的“安全可控”的要求也可能促使消费者选择购买国内的产品和服务。

### **数据隐私**

《网络安全法》第四章阐述了保护个人信息。国家和省/市两级现行的法律法规以及司法解释都对数据隐私保护提出了法定要求,令隐私合规更加复杂。这些法律法规的要求在某些地方是不一致的。例如,《网络安全法》将“个人信息”定义为“可以单独使用或结合其他信息来识别自然人的信息”,而最高人民法院和最高人民检察院解释定义的“个人信息”包括“反映了一个特定的自然人活动的信息”。

《网络安全法》也在之前要求的基础上增加了一些新的要求或特例。假如个人信息泄露、损坏和丢失,网络运营商必须及时告知客户。重要的是,为了防止政府机构在其监管活动过程中滥用个人数据,负责网络安全监督管理的官员必须保护机密的个人信息和隐私,不得泄露、出售或非法向第三方提供此类信息。

### **数据本地化**

中国在过去并未出台综合性的数据本地化政策。虽然其他司法辖区也在一定程度上强加了数据本地化要求,但是中国的数据本地化要求与国家安全要求似乎表明中国有

可能制定超出世界先进工业化国家标准的数据本地化政策,这可能阻碍中国成为创新领导者的全球领导者,因为创新往往取决于信息的自由流动。提供跨境服务且需要信息技术(IT)技术设施的公司应密切关注数据本地化政策的进展,以确保符合相关规定的要求。

《网络安全法》总体上要求在国内运营过程中,关键信息基础设施的经营者所生成和收集的个人信息和重要数据应存储在中国大陆境内。此外,在中国境外传输这些数据之前,必须进行安全评估。《网络安全法》广义上定义关键信息基础设施为在一些重要行业和领域的关键信息基础设施,如公共通信和信息服务、能源、通信、水利、金融、公共服务和电子政务事务和其他领域。损坏、功能缺失和数据泄漏可能会威胁到中国的国家安全、人民的生计,或公共利益。中共中央网络安全和信息化领导小组办公室于2017年7月发布了《关于保护关键信息基础设施的条例草案》,其中列出了网络设施和信息系统在关键信息基础设施范围内的单位清单。但是,关键信息基础设施的具体范围仍然需要充分定义。

2017年4月11日,中共中央网络安全和信息化领导小组办公室公布了《关于跨境转移个人信息和重要数据的安全评估草案》(“安全评估草案”)。安全评估措施草案将关键信息基础设施运营商的数据本地化以及跨境数据传输安全评估的要求扩大到网络运营商。2017年5月19日,中共中央网络安全和信息化领导小组办公室发布了新版《安全评估措施草案》(“新版安全评估措施案”)。更新后的安全评估草案取消了网络(而非关键信息基础设施)运营商的本地化要求。安全评估措施的最终版本是否会采用《网络安全法》中本地化的范围还有待观察。

2017年8月25日,国家标准化管理委员会和国家质量监督检验检疫总局联合发布了一份关于跨境数据传输安全评估的非强制性国家标准草案,《数据跨境转移安全评估的信息安全技术指导意见》(“安全评估准则草案”)。安全评估准则草案(虽然不是强制性的)为利益相关者提供了关于跨境数据传输安全评估的指导。安全评估准则草案定义了诸如“个人信息”、“重要数据”、“国内运营”和“跨境转移”等重要概念。然而,有关数据转移的范围问题仍需接受安全审查。

### **加密法**

2017年4月,国家密码管理局(“SCA”)发布了一项加密法草案(“草案加密法”)。如果以目前的形式实施,

The Cybersecurity Law generally requires that personal information and important data generated and collected by the operators of CIIs in the course of domestic operation be stored within Mainland China. In addition, a security assessment must be conducted before transmitting such data outside China. The Cybersecurity Law broadly defines CIIs as critical information infrastructures in important industries and sectors, such as public communications and information services, energy, communications, water resources, finance, public services and e-government affairs and other areas, in which damage, loss of function and data leakage could threaten Chinese national security, people's livelihoods, or the public interest. The CAC issued a Draft Regulations on Protection of Critical Information Infrastructures (Draft CII Protection Regulations) in July 2017, which provides a list of entities whose network facilities and information systems are within the scope of the CIIs. However, the specific scope of CIIs awaits definition.

On April 11, 2017, the CAC published the Draft Measures for Security Assessment of Cross-border Transfer of Personal Information and Important Data (Draft Security Assessment Measures). The Draft Security Assessment Measures expanded the data localization and cross-border data transfer security assessment requirements for critical information infrastructure operators to include network operators. On May 19, 2017, the CAC circulated an updated version of the Draft Security Assessment Measures (Updated Draft Security Assessment Measures). The Updated Draft Security Assessment Measures remove the localization requirements for network operators, other than CIIs. It remains to be seen whether the final version of the Security Assessment Measures will adopt the scope of localization requirements contained in the Cybersecurity Law.

On August 25, 2017, the Standardization Administration and the General Administration of Quality Supervision, Inspection and Quarantine jointly issued a draft voluntary national standard for security assessment in connection with cross-border data transfer, the Information Security Technology Guidelines for Data Cross-Border Transfer Security Assessment (Draft Security Assessment Guidelines). The Draft Security Assessment Guidelines, though not compulsory, provide stakeholders with guidance on conducting security assessments for cross-border data transfers. Further, the Draft Security Assessment Guidelines define important concepts such as "personal information," "important data," "domestic operation" and "cross-border transfer." Questions remain, however, about the scope of data transfer that is subject to security review.

### Encryption Law

In April 2017, the State Cryptography Administration (SCA) released a draft Encryption Law (Draft Encryption Law). If enacted in its current form, this will restructure and tighten China's regulation of encryption. The Draft Encryption Law broadly defines encryption as items or

technologies that apply specific transformations to data for purposes of encrypted protection or security certification. AmCham China member companies are concerned that the absence of defined exemptions will cause uncertainty regarding the licensing of foreign encryption, and urge the SCA to provide specific exemptions in the law or in implementing regulations.

The Draft Encryption Law classifies encryption into three categories: core encryption, normal encryption and commercial encryption. Core encryption and normal encryption are used to protect state secrets, whereas commercial encryption is used to protect information that does not contain state secrets. However, the Draft Encryption Law does not provide clear definitions of these three categories, which could give rise to confusion with regard to enforcement.

The Draft Encryption Law also requires that the encryption applied to CIIs be graded, and that encryption products and services that impact or may impact national security are subject to national security review. Under China's Multi-Level Protection Scheme (MLPS) for information facilities and systems, CIIs are subject to Level III or above security requirements, which in turn require that domestic Chinese encryption is applied. AmCham China members are concerned that the cumulative effect of these requirements will further restrict foreign participation in the commercial encryption industry. This could force foreign-invested enterprises operating as CIIs to use Chinese encryption, which may be incompatible with existing systems or represent security concerns for those companies.

In addition, the Draft Encryption Law imposes obligations on telecommunications business operators and Internet service providers to provide decryption support upon request from the People's Procuratorates or the Public Security Bureau apparatus for issues related to national security or criminal investigation. AmCham China member companies are concerned that the requirement for decryption support may require companies to submit protected data or information such as encryption keys in a public environment, and urge the introduction of provisions that protect intellectual property in these circumstances.

### Big Data

On September 5, 2015, the State Council published a notice on the implementation of the "Action Plan to Promote Big Data Development." The plan highlights the critical role of big data in improving governance, economic decision-making and public services, and in creating new jobs and developing new high-end industries. From a regulatory perspective, the plan outlines disclosure rules about public information that allow the maximum disclosure of government and public data, provided that associated risks are controllable. The plan also envisages rules regarding the collection, transmission, storage and usage of data, protection of data privacy, protection of basic information networks and information

这将重建并加强中国的加密监管。《加密法草案》广义地定义加密为因加密保护或安全认证对数据进行特定转换的信息或技术。商会会员企业担心，如果没有指定豁免，将会导致外国加密许可的不确定性，因此会员敦促 SCA 在法律或实施条例中提供具体豁免的信息。

加密法草案将加密分为三类：核心加密、普通加密和商业加密。核心加密和普通加密是用来保护国家机密的，而商业加密则用来保护不包含国家机密的信息。但是，《加密法草案》确实对这三个类别进行了明确的定义，防止引起关于执行方面的混乱。

《加密法》草案还要求对关键信息基础设施加密进行评级，并对影响或可能影响国家安全的加密产品和服务进行国家安全审查。在中国的信息设施和体制的多层次保护计划下，关键信息基础设施的安全要求必须达到三级或以上，这就需要中国国内的加密技术。商会会员担心，这些要求的累积效应将进一步限制外资参与商业加密行业。这可能会迫使关键信息基础设施的外资企业仅使用中国的加密技术，这可能与现有体系不兼容，也表示了这些公司的安全担忧。

此外，《加密法》草案规定，电信业务经营商和互联网服务供应商应在人民检察院、公安机关或国家安全部门的要求下提供解密支持，以解决涉及国家安全或刑事调查的问题。商会会员企业担心，要求解密支持可能需要公司在公共环境中提交受保护的数据或加密密钥等信息，会员企业也敦促推行保护知识产权的条款。

## 大数据

2015年9月5日，国务院发布关于实施《促进大数据发展行动纲要》的通知。该纲要强调了大数据在中国改善治理、经济决策、公共服务、创造就业机会和发展高端产业中发挥的关键作用。从监管的角度来看，该披露计划概述了公开信息的披露规则，相关风险可控的情况下，允许最大限度的公布政府和公共数据。该计划还设想有关数据收集、传输、存储和使用、保护数据隐私、保护基本信息网络和关键行业信息系统的规范，以及中国大数据产业行业标准的发展。

大数据继续挑战长期存在的数据治理概念。如上所述，中国在新的法律法规中引入了许多公认的数据隐私概念。随着大数据应用在中国越来越普遍，这些条款将变得越来越具有挑战性。

商会会员鼓励中国政府与国际大数据治理规范接轨。采用新的准则需要持续的国际合作。中国的数据政策的发展有可能推动创新技术的显著增长，建立先进的服务业框架，为现代全球经济生态系统提供支持。在华运营或有意在华投资的公司应该密切关注这方面的发展并遵守相关法律，这些法律有可能要求他们重组数据基础架构，这是一项繁重的工作。

## 产业政策

2017年，国务院发布了几份备受关注的政策文件，特别是国发（2017）39号文，其中指出，中国正在改善外国对其投资环境和产业政策目标的担忧。然而，尽管有这些文件，迄今为止没有发生任何实质性的变化。外资企业仍面临比以往更严格的《国家安全法》、《网络安全法》和数据合规措施，这将极大推动中国利用法律法规进一步实现产业政策目标。习近平主席在2017年10月的第19届共产党代表大会的报告中阐述了实现这些目标的重要性。因此，如果外资企业想要进入中国市场，尤其是在“中国制造2025”行动纲领中的关键领域，他们将继续需要与国内公司共享技术和合作伙伴。中国领导人虽然一再保证中国市场将继续改革，并推动合规环境的建设，保证规范公平、一致。然而，有迹象表明，外国公司的关切并没有得到考虑，反而如上文所述，这些关切在过去几年中有所增加。

## 建议

### 对中国政府：

- 提供对直接影响合规的法律要求的明确定义和解释。例如，在《反不正当竞争法》最终修订版本中明确定义商业贿赂，详细说明公司对员工行为承担的责任，将有助于公司制定和执行强有力的、实用的商业贿赂合规计划。
- 将关于商业贿赂执法权力限制于省市级工商行政管理部门，并发布具有约束力的指南与解释。
- 正视并解决这一问题：在华外国企业经常因监管和执法条款（包括《反不正当竞争法》中的相关条款）而感到不受欢迎，遭到无理的责难。在这方面，发布中央政府指令，强调依法提供公平待遇的法令将大有裨益。许多外国企业非常重视



systems of key industries, and the development of industry standards for China's big data industry.

Big data continues to challenge long-standing data governance concepts. As discussed above, China has introduced a number of data privacy concepts in new legal provisions. These provisions will become increasingly challenging to administer as big data applications become more common in China.

AmCham China members encourage the Chinese government to pursue alignment with international norms for big data governance. The adoption of new norms will require a sustained international collaborative effort. The development of a data policy regime in China has the potential to support immense growth in innovative technologies and to create a framework for advanced services industries that supports the modern global economic ecosystem. Companies operating or looking to invest in China should follow such developments closely, in order to ensure compliance with laws that could require an overhaul of existing data infrastructures.

## Industrial Policy

Several well-publicized State Council pronouncements were made in 2017, particularly Circular No. 39, which stated that China is addressing foreign concerns over its investment environment and industrial policy goals. Despite these pronouncements, however, no meaningful change has occurred to date. Foreign companies in China continue to face stricter security laws, including the National Security Law, the Cybersecurity Law, and related data compliance measures, some of which have the effective of supporting China the furtherance of China's industrial policy objectives. President Xi Jinping laid out the importance attached to pursuing these goals in his report to the 19th Communist Party Congress in October 2017. Accordingly, foreign companies can expect that they will continue to be pressured to share technology and to partner with domestic firms, if they are to enjoy access to the Chinese market, especially in key sectors outlined in the "Made in China 2025" initiative. Chinese leaders continue to provide assurances that China's market will continue to be reformed, and promote a compliance environment in which a fair and consistent set of rules guides the marketplace for all. However, indications are that the concerns of foreign companies are not being taken into account and, as outlined above, those concerns have increased over the past few years.

## Recommendations

### *For the Chinese Government:*

- **Provide clear definitions and explanations of legal requirements that directly impact compliance. For example, clear definitions in the final version of the AUCL regarding commercial bribery and companies' liability for their employees' behavior will assist companies with developing and enforcing robust and practical programs for commercial bribery compliance.**
- Restrict enforcement power regarding commercial bribery to provincial and municipal-level AICs, and publish binding guidance and interpretations on commercial bribery.
- Acknowledge that foreign businesses in China often feel unwelcome and unjustifiably targeted under regulatory and enforcement provisions, including provisions in the AUCL. A central government directive reinforcing the mandate to provide equal treatment under the law may help to combat this. Many foreign businesses place a heavy focus on and devote significant resources to compliance, which is not generally recognized by local enforcement authorities.
- Harmonize national and local regulations, as well as different sector-specific regulations on data privacy to increase regulatory consistency.
- Provide national treatment to investors in China through a transparent, consistent, and rules-based system that is in line with international norms, and with market forces playing the central role as promised in November 2013's Third Plenum of the 18th National Party Congress.
- Improve transparency in the drafting, implementation, and enforcement of laws and regulations, in order to strengthen confidence in the predictability and consistency of the legal and regulatory environment.

### *For the US Government:*

- **Engage in bilateral dialogue in-depth exchanges to support the implementation of transparent and predictable regulatory systems, and a common understanding of compliance tools and objectives.**
- Continue to work proactively with China in international anti-bribery and corruption forums.

合规，并投入了大量资源，然而这一做法并没有得到中国执法部门的普遍认可。

- 协调国家、地方以及不同行业的数据隐私法规，提高监管一致性。
- 建立符合国际准则的透明、统一、法治体系，在此体系下为在华投资者提供国民待遇，履行 2013 年 11 月十八届三中全会对于让市场力量发挥决定性作用的承诺。
- 提高法律法规起草、实施和执行的透明度，提高法律和监管环境的可预测性与确定性。

#### **对美国政府：**

- 参与双边对话，深入开展交流，为实施透明且可预测的监管制度提供支持，针对合规工具和目标达成共同理解。
- 继续在国际反贿赂和腐败论坛上与中国开展合作。

# Customs and Trade

## Introduction

In recent years, the General Administration of Customs (GAC) and the former General Administration of Quality Supervision, Inspection, and Quarantine (AQSIQ) have continued to increase cooperation and develop innovative customs clearance methods. They have achieved positive results in improving customs clearance efficiency, reducing business costs, and promoting trade facilitation. At the 16th meeting of the Leading Group on Central Financial and Economic Affairs in July 2017, President Xi stated, “It is necessary to solve the outstanding problems of high institutional import costs, the complicated processes related to inspection, quarantine, and customs clearance, and the lack of adequate means for enterprises to raise concerns about customs and trade issues.” Following that event, both the GAC held meetings to implement measures according to the directive.

Our members feel that the efficiency of port clearance can be further improved through methods such as workflow optimization and digitization of office procedures. These methods also include integrating the customs clearance process and simplifying quality inspection procedures to improve the efficiency of customs clearance.

AmCham China has closely monitored the efforts of GAC to improve efficiency and promote trade facilitation. In October 2017, AmCham China met with GAC and the former AQSIQ to discuss issues. Following the talks, GAC not only provided comprehensive feedback on the views stated in the White Paper, but also contacted local customs agencies to improve coordination and respond to the issues identified by our members. AmCham China appreciates the efforts of GAC to provide such feedback.

## Ongoing Regulatory Issues

### *Administrative Adjudication*

GAC released the “Preliminary Adjudication Management Methods of GAC (Draft for Comment)” on November 24, 2017.

AmCham China members generally felt that the provision requiring that an application for preliminary adjudication to the pre-adjudication authority be made three months before the goods are planned to be imported and exported is unreasonably short. As GAC has no means to verify the “three months” period, AmCham China urges that the specific time regulation be revised.

Regarding the effectiveness of preliminary adjudication, AmCham China members feel that the three-year validity period starting from the date of the “Preliminary Adjudication Decision” draft is unnecessary and will reduce efficiency by causing parties to reapply. As such, AmCham China urges that the time limit for preliminary adjudication be deleted.

Members also found issue with the 15-day acceptance time limit and the 90-day preliminary adjudication time limit, and hope that GAC can act more quickly.

AmCham China further suggests that GAC develop support systems. Development of online submission, online review, and online publication procedures will enable GAC to increase transparency and convenience.

### *Intelligent Customs*

Intelligent Customs is the product of a modernizing GAC. Its fundamental goal is to efficiently develop the various management functions of customs administration through the application of modern science, technology and management methods, as well as the design and development of new customs administration system. Likewise, the development of this customs system will help to address the needs of enterprises to achieve efficient and economical customs clearance. In 2017, the GAC surveyed the external needs of the Intelligent Customs project through various channels. AmCham China members are encouraged by this measure in which they actively participated.

### *Applications and Breakthroughs of New Technology*

AmCham China is encouraged by the bold innovations and pilot programs, such as the RFID tag and intelligent video analysis, in GAC’s application of Internet of Things

# 关税和贸易

## 引言

**近**年来，海关总署、质检总局（现已划归为国家市场监督管理总局）继续加强合作、创新通关方式，在提高通关效率、降低企业成本、促进贸易便利化方面取得了积极的成效。在2017年7月中央财经领导小组第16次会议中，习主席提出“要解决制度性高进口成本、检验检疫和通关的相关繁琐流程、企业缺乏提出海关和贸易相关问题的充分渠道的问题”。海关总署随后召开会议，贯彻落实会议指示。

中国美国商会（商会）会员企业认为通过优化工作流程、数字化办公程序等措施，通关效率进一步得到了提升。这些措施还包括整合通关流程，简化质量检验流程，以提高通关效率。

商会密切关注海关总署为提高效率，促进贸易便利化所做出的努力。2017年10月，商会与海关总署和前质检总局会面，讨论相关问题。会谈结束后，海关总署不仅对《白皮书》中的观点作出全面反馈，还与当地海关机构联系，以加强协调并回应商会会员发现的问题。商会赞赏海关总署为提供此类反馈所做出的努力。

## 现存监管问题

### 预裁定

2017年11月24日，海关总署发布《中海关总署预裁定管理办法》（征求意见稿）。

商会会员普遍认为要求“应当在货物拟进出口3个月之前向预裁定机关提出预裁定申请”的规定不合理，时间过短。海关也无从对所谓的“3个月”的周期进行核实，因此，商会敦促修改具体的时间规定。

关于预裁定的效力，商会会员认为征求意见稿内提及的《预裁定决定书》做出之日起3年有效的规定并非必要，

因为这将导致各方需重新申请，从而降低效率。因此，商会促请删除对预裁定时效的规定。

商会会员还发现关于15日的受理时限和90日的预裁定时限存在问题，并希望海关总署可以更快采取行动。商会进一步建议海关总署开发支持系统。在线提交、在线审核、在线公布的开发将使海关总署提高透明度和便利度。

### 智慧海关

智慧海关是海关总署现代化的产物，其根本目标是通过现代科学技术和运用，以及全新的海关管理系统的设计开发，有效开发海关管理各项管理职能。同时，该海关系统的开发将有助于满足企业实现高效、经济的清关需要。2017年，海关总署通过各种渠道对智慧海关项目的外部需求调研，商会会员积极参与这些措施并备受鼓舞。

### 新技术的应用与突破

新技术的应用和突破：商会欣喜地看到近年来尤其是金关工程二期建设期间，总署对物联网技术应用的大胆创新和试点（例如RFID电子标签、智能视频分析等）。商会鼓励海关进一步采取措施、拓展机会，对创新高科技技术进行更加深入的、务实的探索，以进一步推动智慧海关建设，这些探索包括物联网技术、人工智能（深度学习、机器学习、影像分析等）、大数据、无人机、智能眼镜等。

### 系统的稳定性

商会会员对目前海关通关系统的稳定性以及智慧海关正在建设的全新的海关管理系统的稳定性表示担忧。目前，海关系统运行正常，但是，当海关系统需要升级维护或出现突发性故障或不稳定的时候，通关就会短时间停滞或变缓，从而影响企业收发货的能力，尤其对通关时效要求较高的行业和企业，影响较大。商会建议进一步加强海关通关系统的稳定性，对通过认证的诚信企业在有紧急需求的

technology during the past few years, especially during the second phase of the construction of the Golden Gate Project. AmCham China encourages Customs to take further measures, expand opportunities, and conduct more in-depth and pragmatic research on innovative high-tech. Such efforts could include Internet of Things technology, artificial intelligence (deep learning, machine learning, image analysis), big data, unmanned aerial vehicles and smart glasses, to further promote the construction of Intelligent Customs.

### *System Stability*

Our members are concerned about the stability of the current customs clearance system, as well as that of the new customs administration system of Intelligent Customs under construction. At present, the customs system operates normally. However, in cases where the customs system needs to be upgraded and maintained or a sudden failure or instability occurs, customs clearance is stalled or slowed for short periods of time, affecting enterprises ability to receive and deliver goods. This especially affects industries and enterprises that operate under time-sensitive conditions. AmCham China proposes that the stability of the customs clearance system be strengthened further, by providing emergency response and support measures, such as manual release for certified and creditworthy enterprises, in the event of urgent need. This would minimize the impact of customs system failures on enterprises' customs clearance operations.

### *Single Window System*

Premier Li Keqiang on several key occasions emphasized the need to achieve full coverage of the international trade "single window system" by the end of 2017. Such events included the delivery of the Government Work Report in 2017 and the executive meeting of the State Council. This is of great significance for enterprises, as it offers an opportunity to improve the efficiency of customs clearance and lower enterprise costs.

AmCham China hopes that standards can be unified and information asymmetries can be reduced on the basis of the international trade "single window." We further hope that with the consolidation of customs and inspection, all departments can increase cooperation and joint administration to maximize reporting efficiency, reduce customs clearance time, and lower enterprise costs. Regulatory authorities should also consider the characteristics of import and export trade when introducing reforms, and grant a transition period or provide relief measures to enterprises to minimize the impact of new policies on their normal import and export trade activities.

### *Classification of Import and Export Goods in Bonded Warehouses*

"General Administration of Customs Decree No. 227" states that the oil and materials of international navigation ships

and aircrafts are duty and tax-exempt when bonded goods are discharged from bonded warehouses. When bonded goods are placed in storage, the consignee, consignor, or the agent must deliver the relevant documents to the customs administration to proceed with the clearance of goods and storage procedures. Customs will check the varieties, quantities and amount of customs clearance and stored goods based on the approved bonded warehouse storage range and type of goods. The "Import and Export Customs Duty Regulations of the People's Republic of China" also stipulates that the taxpayer shall classify the import and export goods that they have declared, and include these in the corresponding tariff line, in accordance with directory provisions, categorical rules, class notes, chapter notes, subheadings and other classified annotations. Customs shall examine and verify the classification of the goods in accordance with law.

In actuality, the classification of import and export goods in customs is not uniform between regions. For example, Dalian bonded warehouse customs requires that products under the classifications 2710199100/2710199200/3403990000/3403190000/3819000000 be declared under 2710199100. However, in bonded warehouses in Nantong, Ningbo, Fujian, Guangzhou, Qingdao and Tianjin, the same products are declared to be anywhere between one and three classifications. This non-uniformity of the declaration requirements has caused problems for enterprises with both tax-free and taxable imports, as the same product may be declared under two separate classifications. Additionally, items with multiple classifications cannot undergo customs transfer. AmCham China recommends that GAC unify the actual declaration of the classification of bonded warehouses goods for tax and duty purposes to simplify declarations.

### *Foreign Exchange Payment Service of Trade*

In accordance with the requirements of the State Administration of Foreign Exchange, as of May 1, 2017, foreign exchange payment service for trade worth more than 100,000 U.S. dollars is to be conducted on the basis of examining relevant transaction documents according to regulatory requirements. In principle, banks are to verify the corresponding import declaration electronic information through the "declaration information verification" module of the foreign exchange monitoring system of trade in goods. If an enterprise finds that the wrong prices were mistakenly declared to customs, it will normally submit a self-disclosure application to customs officials. However, according to customs regulations, if the tax-related amount exceeds 5,000 yuan, customs shall register and investigate or pursue an anti-smuggling action. Anti-smuggling investigations are lengthy and the associated penalties are greater. There are also risks of downgrading connected with this type of investigation. AmCham China urges the GAC to launch an expedited processing platform for enterprises to correct mistakes as soon as possible, in order to expedite foreign exchange payments.

情况下，提供诸如手工放行的紧急响应和支持措施，这将使海关系统故障对企业通关运作造成的影响降到最低。

## 单一窗口

李克强总理在 2017 年政府工作报告、以及国务院常务会议等重要场合多次强调要求国际贸易“单一窗口”2017 年年底实现全覆盖。这一举措提供了提高通关效率、降低企业成本的机会，对企业意义重大。

商会希望统一标准，在国际贸易“单一窗口”的基础上，减少信息不对称。商会还希望海关与国检重新整合之后，各部门间能够加强协作共管，最大限度上提高申报效率，缩短通关时间，降低企业成本。各监管部门在推进相关改革时，应当考虑进出口贸易的特性，给予企业一个过渡期或提供救济措施，尽量降低新政对企业正常进出口贸易活动带来的影响。

## 保税仓库进出口商品归类

《海关总署第 227 号令》中规定：用于国际航行船舶和航空器的油料、物料在保税仓储货物出库时依法免征关税和代征税。而在保税仓储货物入库时，收发货人或其代理人需将有关单证递交海关，办理货物报关入库手续，海关会根据核定的保税仓库存放货物范围和商品种类对报关入库货物的品种、数量、金额进行审核。《中华人民共和国进出口关税条例》规定，纳税义务人应当按照《税则》规定的目录条文和归类总规则、类注、章注、子目注释以及其他归类注释，对其申报的进出口货物进行商品归类，并归入相应的税则号列；海关应当依法审核确定该货物的商品归类。

实际上，各地海关对保税仓库的进出口商品的归类存在不统一的情况。如大连保税仓的海关对商品归类 2710199100/2710199200/3403990000/3403190000/38190000 项下产品统一要求申报在 2710199100 下。然而，在南通、宁波、福建、广州、青岛、天津的保税仓库，同样的产品都申报在 1-3 个商品归类下，这种申报要求的不统一性给同时进口免税和应税的企业带来了困扰，因为同一个商品可能存在 2 个独立的商品归类，此外，有多种归类的商品也无法实现转关的操作。商会建议海关总署能够出于税收和关税目的，统一保税仓商品归类的实际申报，以简化申报。

## 贸易对外付汇业务

根据国家外汇管理局的要求，自 2017 年 5 月 1 日开始，对办理单笔等值 10 万美元以上货物贸易对外付汇业务，银行在按法规要求审核相关交易单证的基础上，原则上应通过货物贸易外汇监测系统的“报关信息核验”模块，对相应进口报关电子信息办理核验手续。若企业发现向海关申报了错误价格，一般会向海关官员递交自我披露申请。但海关规定，如果涉税金额超过 5 千元以上，海关将对其立案调查或移交缉私。缉私调查耗时很久，且相关处罚力度较大，还面临与此类调查有关的降级的风险。商会敦促海关总署能推出快速处理平台，方便企业及早纠正错误，以加快外汇付款。

## 进口环节消费税

根据“《国家税务总局关于消费税有关政策问题的公告》（2012）47 号”（第 47 号公告）和“《国家税务总局关于消费税有关政策问题补充规定的公告》（2013）50 号”（第 50 号公告），一些在国内生产的产品不需要缴纳消费税。但是，当这些相同的产品进口时，就会征收消费税，因为在中国现行制度下没有适当的子代码来对它们进行分类。这导致在中国生产的随后被进口的相同产品的税收水平不同，这样的现状不利于中国的公平竞争环境。贸易协会和公司已经向负责该问题的政府机构就此问题提交了材料。商会希望相关政府机构，包括海关总署、国家税务总局和财政部加强协调，以解决这一问题，使进口商能够享受与国内生产商一样的待遇。

例如：2016 年 3 月 1 日，轻质白油行业标准开始实施，根据第 47 条通知和第 50 号通知，国内生产的符合该标准的轻质白油不再征收消费税。但是，对同样符合该标准的进口轻质白油产品，海关征收最高达 2000 元人民币 / 吨的进口消费税。这不仅降低了进口产品的价格竞争力，也大大增加了国内使用者的成本，从而也导致全球竞争力的下降。

## 快递行业的相关诉求

### 印刷材料的种类说明

《中华人民共和国海关进出境印刷品及音像制品监管办法》（署令 161 号）第十一条规定，进口印刷材料及音像制品，应当委托国务院相关行政主管部门指定的进口经营单位向海关办理进口手续；第二十五条也对其进口流程

## *Import Excise Duty*

According to the “Notice of the State Administration of Taxation on Consumption Tax Related Rules (2012) No. 47” (Notice No. 47) and the “Notice of the State Administration of Taxation on Supplementary Rules for Consumption Tax (2013) No. 50” (Notice No. 50), some products produced in China are not subject to consumption tax. However, when these same products are imported, consumption tax is levied on them because there is no proper sub code to categorize them under the current system in China. This has caused tax level difference for the same product produced in China but then imported, which is not conducive to an even playing field in China. Trade associations and companies have submitted materials to government agencies in charge regarding this issue. AmCham China hopes that relevant government agencies including the GAC, State Administration of Taxation, and Ministry of Finance enhance coordination to resolve this problem so that importers can enjoy the same treatment as in-country producers.

An example of this issue can be found in the case of the Light White Oil industry. After its standard became effective on March 1, 2016, in accordance with Notice 47 and Notice 50, white oil products produced in China meeting the standard were no longer subject to consumption tax. However, the same imported products also meeting the standard are required to pay up to RMB 2,000/ton at customs for consumption tax. This not only lowers the competitiveness of imported products, but also greatly increases costs for in-country users, resulting in reduced global competitiveness.

## *Related Requests of the Express Delivery Industry*

### *Clarification on the Category of Printed Materials*

Article 11 of the “Regulatory Measures of the People's Republic of China on the Control of Customs Inbound and Outbound Presswork and Audio-Video Products (No. 161 Order)” stipulates that imported printed material and audio-video products shall be entrusted to the import business units designated by the relevant administrative departments under the State Council to undergo import formalities with customs. Article 25 also provides the import procedures for “printed material,” referring to text or images reproduced on paper or other commonly used materials which shall be entrusted to the import business units designated by relevant administrative departments.

The scope of printed materials includes a wide range of items, including newspapers, books and magazines, maps, posters, advertisements, envelopes, letterheads, portfolio bags, trademarks, labels, business cards, invitations, banknotes, greeting cards. The provisions of Decree No. 161, which entrusts designated import business units to handle import formalities, involve a larger range of goods and import and export enterprises. This will have a significant impact on the efficiency of

customs clearance of import and export enterprises. AmCham China urges further narrowing the scope of print materials to printed publications with ISBN (International Standard Book Number) and ISSN (International Standard Serial Number) numbers to distinguish them from print products without commercial purposes.

### *Cancellation of the Declaration of Certificate of Entrustment*

Repeated filling of the “Declaration of Certificate of Entrustment” reduces the efficiency of customs clearance and causes enterprises unnecessary inconvenience. AmCham China hopes that the “Declaration of Certificate of Entrustment” can be repealed or replaced with long-term powers of attorney to improve customs clearance efficiency.

### *Early Declaration Procedure*

Early declaration is a convenient customs clearance measure that can accelerate customs clearance. Under this process, documents are reviewed before the arrival of goods so that goods can be picked up directly after their arrival. However, at present, some ports have failed to fully implement an early declaration process. Supporting measures related to early declaration still have some flaws. As a result, enterprises are apprehensive about utilizing this policy, as there are concerns that there may be no means to rectify problems that may occur.

### *Simplification of Taxation Models*

AmCham China recommends that international advanced taxation models be used to unify tax rates for goods worth less than 5,000 yuan, thereby simplifying classification and facilitating customs clearance.

## **Recommendations**

### *For the Chinese Government:*

- **Remove or improve the stated time limits for preliminary adjudication.**
- Encourage customs to take further measures, expand opportunities, and conduct more in-depth and pragmatic research on innovative high-tech.
- Increase the stability of the customs clearance system and provide better emergency response and support measures.
- Ensure that standards are unified and information asymmetries reduced on the basis of the international trade “single window”.
- Encourage GAC to unify the declaration of the classification of bonded warehouses goods and Tax

作出规定：印刷材料是指在纸张或者其他常用材料上翻印的图像或者文字，需要委托给相关行政主管部门指定的进口经营单位。

印刷材料的范畴种类繁多，包括报纸、书刊杂志、地图、海报、广告、信封、信笺、档案袋、商标、标签、名片、请柬、钞票、贺卡。按照署令 161 号的规定，委托指定的进口经营单位办理进口手续，涉及到的商品种类、进出口企业范围较大，将对进出口企业的通关效率产生重大的影响。商会敦促进一步明确印刷材料的范围限定为带 ISBN（国际标准书号）、ISSN（国际标准连续出版物号）的印刷出版物，对无商业目的的其他印刷制品区别对待。

### **取消报关委托书**

重复填制报关委托书降低了通关效率，给企业带来了不必要的麻烦，商会希望取消报关委托书或者用长期委托书代替，从而提高通关效率。

### **提前申报**

提前申报是一项可以加速通关的便捷通关措施。按照该流程，在货到以前提前进行单证审核，使货物到港后就能提货。但是目前部分口岸没有实现提前申报，和提前申报相关的一些配套措施也不尽完善。因此企业对采用这一政策仍心存顾虑，担心采用这一政策后，一旦出现问题，将无法得到妥善解决。

### **简化税收模式和检验检疫流程**

商会建议使用国际先进税收模式，5000 元以下统一税率、简化归类、便利通关。

准和减少信息不对称。

- 鼓励海关总署统一保税仓库货物分类申报和税收规定，降低企业管理的复杂性。
- 鼓励海关总署尽快创建一个快速处理平台，使企业能尽快纠正错误，以加快外汇支付。
- 确保相关进口企业享受与国内生产商相同的税收待遇。
- 优化快递行业通关流程。

## **建议**

### **对中国政府：**

- 删除或改进预判决的规定时限。
- 鼓励海关采取进一步措施，扩大机遇，对创新型高科技进行更深入，更务实的研究。
- 提高通关系统的稳定性，提供更好的应急和支持措施。
- 在国际贸易“单一窗口”的基础上，确保统一标



Regulations, and reduce the complexity of business management.

- Encourage GAC to create a rapid processing platform for enterprises to correct mistakes as soon as possible, in order to make foreign exchange payments swifter.
- Ensure that relevant import enterprises enjoy the same treatment as in-country producers regarding tax levels.
- Optimize the customs clearance process for the express delivery industry.



# Government Procurement

## Introduction

China began negotiations to join the World Trade Organization (WTO) Agreement on Government Procurement (GPA) in December 2007. After ten years of negotiations, China has yet to complete its accession. It has submitted six offers, with the latest revised offer submitted in December 2014. At a February 2017 meeting of the WTO Committee on Government Procurement, China indicated that it would submit a revised market access offer that would include improvements relating to its sub-central government entities and state-owned enterprises (SOEs). President Xi Jinping also noted in his keynote speech at the Boao Forum for Asia (BFA) annual conference in April 2018 that China will seek faster progress toward joining the GPA. However, the specific timing for submission of a new revised offer is not known.

AmCham China acknowledges the progress China has made with each revised offer and appreciates its commitment to submit another revised offer that will improve its coverage of sub-central entities and SOEs. Our members also acknowledge that China's 2014 offer provides coverage that is in many respects commensurate with the coverage of GPA parties, such as those relating to certain threshold levels and coverage of sub-central government entities.

However, AmCham China is concerned about the loss of momentum in China's accession negotiations, given that more than three years have elapsed since China's last offer. We urge the Chinese government to focus on closing the remaining gaps in the few key areas identified below, so that it can conclude its accession to the GPA in 2018.

Opening China's government procurement market to foreign competition is in the country's interest. Doing so would provide Chinese government entities with access to the goods and services of the GPA parties, enabling them to acquire high-quality, state-of-the-art goods and services at competitive prices. Joining the GPA would also provide China with tools to combat local protectionism and corruption, and strengthen the rule of law in China.

Moreover, China's GPA accession would allow it to fulfill its WTO commitment and enable it to participate

in the continued development of international procurement standards and practices. It would also constitute an opportunity for China to advance its commitment to the multilateral trading system. For US firms, China's accession would allow them to participate in China's government procurement on a transparent, predictable, and non-discriminatory basis.

AmCham China urges the Chinese government to make further efforts to open its government procurement market on a reciprocal basis with the US, as well as with the other 46 WTO members that are parties to the GPA, by completing its accession to the GPA.

## China's Government Procurement Market

In August 2017, the Ministry of Finance (MOF) reported that the total value of China's government procurement is about RMB 2,573 billion (approximately US \$400 billion) in 2016, a 22.1 percent increase from the previous year, accounting for 11 percent of national fiscal expenditure and 3.5 percent of GDP in 2016. The total value of government centralized procurement, departmental procurement and decentralized procurement was, respectively, RMB 1,645 billion (approximately US \$250 billion), RMB 613 billion (US \$97 billion) and RMB 851 billion (approximately US \$130 billion). This accounted respectively for 52.9 percent, 19.7 percent and 27.4 percent of the total government procurement.

According to 2017 MOF guidance issued to local governments on the compilation of procurement information statistics, China's procurement statistics cover "procurement by government departments, institutions, and public organizations using regular budget funds, for goods, construction, and services listed in the Centralized Procurement Catalogue or above certain thresholds for procurement using other financial resources." Procurement by state-owned enterprises (SOEs) is not included as SOEs' procurement activities are not considered "government procurement" under the Government Procurement Law.

# 政府采购

## 引言

**中**国于 2007 年 12 月启动加入世界贸易组织《政府采购协定》(GPA) 谈判。经过 10 年的谈判，中国已经提交六份出价清单，最新修改版的出价清单提交的时间为 2014 年 12 月。在 2017 年 2 月举行的世贸组织政府采购委员会会议上，中国表示将提交一份针对市场准入的修改版出价，内容将涉及与中央政府和国有企业相关的改进。习近平主席在 2018 年 4 月份的博鳌亚洲论坛的主旨讲话上也强调中国将会加快加入《政府采购协定》的进程。然而，提交此修订的日期尚不明确。

中国美国商会(商会)对中国提交的不断修改迭代的出价清单所取得的进步表示认可，并对中国政府承诺提交一份修改出价和将中央政府和国有企业列入采购主体表示赞赏。会员企业也对 2014 版最新清单出价范围与《政府采购协定》参加方的出价范围在很多方面大体相当表示赞赏，例如部分门槛价降至参加方水平以及将中央实体列入采购主体。

但是，考虑到距离中国上一次提交出价清单已过去三年多，商会担心中国会失去加入《政府采购协定》的动力。商会促请中国政府重点缩小下文所讨论的少数关键领域内仍存在的差距，从而使中国能够顺利地在 2018 年加入《政府采购协定》。

中国对外开放政府采购市场、引入国际竞争符合中国的利益，并有助于中国相关政府实体能得到《政府采购协定》参加方的商品和服务，获取质高价优、最先进的商品及服务。加入《政府采购协定》还将为中国提供消除地方保护主义和腐败的工具，还可以加强中国的法制建设。

此外，中国加入《政府采购协定》，将有助于履行入世承诺，并能够参与到国际采购标准和实践持续发展的进程中。这也将是促进中国履行其对多边贸易体制承诺的机会。对美国企业而言，中国的加入将使它们在透明、可预测和非歧视性的基础上参与中国政府采购。

商会促请中国政府在互惠的基础上向美国及其他 46 个 GPA 成员国继续开放政府采购市场，从而加速加入《政府采购协定》的进程。

## 中国政府采购市场

2017 年 8 月，财政部(MOF)报告称，2016 年中国政府采购总额约为 25,730 亿元人民币(约 4000 亿美元)，比上年增长 22.1%，占 2016 年全国财政支出的 11%，GDP 的 3.5%。政府集中采购、部门采购和分散采购的总价值分别为 16,450 亿元人民币(约 2500 亿美元)、6,130 亿元(970 亿美元)和 8,510 亿元人民币(约 1300 亿美元)。这分别占政府采购总额的 52.9%、19.7% 和 27.4%。

根据 2017 年财政部发布的指导地方政府编制采购信息统计，中国的采购统计涵盖“政府部门、机构及公共组织使用固定财政预算资金对《集中采购目录》中所列商品、工程和服务的采购行为，或使用其他财政资源对超过门槛价进行的采购行为”。根据《政府采购法》，国有企业采购活动涵盖范围以外的国有企业采购不纳入“政府采购”。

## 中国加入《政府采购协定》的相关背景

### 门槛水平

在 2014 年提交的出价清单中，中国提出在实行较高过渡门槛的两年渐进期过后，方适用《政府采购协定》两方或多方同等的永久性门槛。在中央政府实体采购货物或服务方面，中国提出的门槛价与除日本及荷属阿鲁巴岛之外的《政府采购协定》全体参加方相当，即 13 万特别提款权。中国同时采用了参加方通用的 500 万特别提款权的工程门槛。中国还提出了过渡期门槛，即货物和服务采购采用 20 万特别提款权，工程服务采用 1000 万特别提款权。

在次中央政府实体采购货物和服务方面，中国将采用

## Background of China's Accession to the GPA

### Threshold Levels

In its 2014 offer, China proposed to apply the same permanent thresholds as those used by two or more GPA parties after a two-year phase-in period with higher transitional thresholds. For goods and services procured by its central government entities, China proposed the same threshold, namely 130,000 Special Drawing Rights (SDRs), as used by all GPA parties except Japan and the Netherlands with respect to Aruba. China also accepted such parties' use of a construction threshold of five million SDRs. China proposed transitional thresholds of 200,000 SDRs for goods and services and 10 million SDRs for construction services.

For goods and services purchased by its sub-central government entities, China would apply the same threshold as the US and Canada (355,000 SDRs), following application of a two-year threshold of 500,000 SDRs. For goods and services procured by SOEs and other entities, China would apply the 400,000 SDRs threshold used by most parties, including the US, for entities at the sub-central level. That threshold would be applied after a 600,000 SDRs transitional threshold. For construction services procured by both its sub-central entities and other entities, China would initially apply a 25 million SDRs threshold for two years before applying the 15 million SDRs threshold used by Japan and Korea, rather than the five million SDRs used by most parties.

### Coverage of Central and Sub-Central Government Entities

China increased its coverage of central government entities from 50 entities in its initial offer to 63 entities in its 2014 offer. That coverage appears comparable to that of GPA parties, with one significant exception. China has not offered its Ministry of Defense or defense-related entities. The only GPA party that does not cover its defense entities is Israel.

Regarding sub-central coverage, China offered 15 of its 22 provinces and all four of its provincial-level municipalities (Beijing, Chongqing, Shanghai, and Tianjin). This coverage is generally comparable to that of GPA parties that list their sub-central entities, such as the US, but dissimilar to those that provide more comprehensive sub-central coverage, such as the EU, which covers categories of entities.

### Coverage of SOEs and Other Entities

In relation to the coverage of SOEs and other entities, China's 2014 offer included 22 entities, only three of which were SOEs: Agricultural Development Bank of China, China Central Depository and Clearing, and China Post Group, whose coverage was limited to procurement for universal postal services. Other SOE policy banks, for example, were not offered.

### Coverage of Service Sectors

China, like all GPA parties except the US, New Zealand, and Ukraine, bases its coverage of services on a positive list, which covers only listed service categories. China's offer is not as comprehensive as that of the US, New Zealand, and Ukraine, which cover all services except those listed. A comparison of China's offer with the services covered by the other parties is difficult because of the spread of coverage among various categories and sub-categories. China follows the other parties that base their services coverage on the limitations and conditions specified in commitments under the WTO General Agreement on Trade in Services.

In the field of construction services, China has gradually expanded its coverage, adding seven new subsectors in its 2014 offer. However, coverage still falls short of the GPA parties, which cover all construction services, with the exception of dredging in the US and Canada.

Within these constraints, China's coverage is generally commensurate with that of GPA parties. However, some of its proposed exceptions still serve as obstacles to its accession.

### Problematic Exceptions

The first of China's troublesome exceptions is its reservation of the right to deviate from the principle of national treatment when a specific procurement may "impair important national policy objectives." Such an open-ended exclusion would render China's coverage unpredictable and subjective. Second, China has stated that it wishes to be able to require the incorporation of domestic content, offsets, or transfer of technology in any procurement. Such a reservation would be contrary to the GPA's prohibition of offsets except as a transitional measure.

Third, China has qualified its sub-central coverage with an exclusion of procurement of construction services "using special funds of the central government." The scope of this restriction is unclear, but it could significantly undermine sub-central coverage if it applies to most or all construction undertaken in the provinces.

### Proposed Transitional Measures

China's offer proposes three types of transitional measures: higher thresholds for all entities for two years after it implements the GPA; phased-in coverage of two-thirds, (i.e., ten of its covered provinces three years after the GPA enters into force for China); and a three-year delay in implementing GPA obligations after its accession.

To facilitate accession by developing countries, the GPA permits the use of transitional measures, with the approval of the parties. Such measures include price preferences, offsets, phased-in addition of specific entities or sectors, and higher temporary thresholds. The GPA also allows for

与美国和加拿大相同的门槛价（35.5 万特别提款权），在两年过渡期内门槛价为 50 万特别提款权。在国有企业及其他实体采购货物和服务方面，中国计划采用绝大多数参加方（包括美国次中央实体）都采用的门槛价，即 40 万特别提款权，且在两年过渡期内该门槛价为 60 万特别提款权。次中央实体及其他实体采购工程服务时，中国将采用 2500 万特别提款权的两年过渡期门槛价，过渡期过后采用的门槛价为日本和韩国所适用的 1500 万特别提款权，而不是绝大多数参加方所使用的 500 万特别提款权。

### 中央和次中央政府实体的范围

中国将中央政府实体从初步出价清单中的 50 个增加到 2014 年出价清单中的 63 个。上述覆盖范围看起来与 GPA 参加方的相当，但却存在一个显著的例外情形。中国的采购实体并不包括国防部和国防相关实体，而在《政府采购协定》参加方中只有以色列将国防实体排除在外。

在次中央实体范围方面，中国将其 22 个省份中的 15 个省加上全部 4 个直辖市（北京、重庆、上海和天津）纳入采购实体名单。上述范围与具体列明次中央实体的《政府采购协定》参加方，如美国的覆盖水平大致相当，但与欧盟等更广泛地规定次中央实体类别的参与方相比尚有差距。

### 国有企业和其他实体的范围

在国有企业和其他实体的覆盖范围方面，中国在其 2014 年的出价清单中列出了 22 家实体，其中只有 3 家是国有企业：中国农业银行、中国中央国债登记结算有限责任公司和中国邮政集团（仅限采购邮政普遍服务）。其他国有政策性银行则未予涉及。

### 服务业的范围

中国与除美国、新西兰和乌克兰之外的所有《政府采购协定》参加方一样，以正面清单的形式列明采购服务的范围（仅适用列明的服务类别）。美国、新西兰和乌克兰则采取负面清单形式，所有未列入负面清单的服务都属于采购服务范围。相比之下，中国的采购服务范围没有美国和新西兰的全面，与其他参加方也缺乏可比性，因为其他参加方规定的采购服务范围涉及面更广、分类更细。中国还沿用其他参加方的做法，规定采购服务的范围还需遵守中国在 WTO《服务贸易总协定》谈判中规定的限制和条件。

在工程服务方面，中国已逐步扩大采购范围，在 2014 年的出价清单中新增七个子行业。但扩大后的工程服务采

购范围依然达不到《政府采购协定》参加方的覆盖水平：除美国和加拿大将疏浚业排除在采购范围之外，其他参加方的采购范围均覆盖所有的工程服务。

在这些限制条件下，中国的采购覆盖范围与《政府采购协定》参加方基本相当，但出价清单中规定的例外情形依然是中国加入《政府采购协定》的阻碍。

### 问题众多的例外规定

中国的出价清单中存在以下三个问题。首先，例外规定对于“有可能损害国家重要政策目标”的特殊采购保留不执行国民待遇的权利。这种开放式的排除性规定会导致中国政府采购的范围变得不可预测且相当主观。其次，中国希望能够对政府采购项目的本国比例、补偿交易或者技术转移提出要求。这种保留规定与《政府采购协定》所执行的“除过渡性措施外，禁止采用补偿交易”的规定背道而驰。

再次，中国已经提出其次中央实体采购项目不包括采购“使用中央政府专项资金”的工程服务。上述排除规定虽然并不明确，但如果适用于大部分或全部省级工程，则会严重缩小次中央实体的采购项目范围。

### 提议的过渡性措施

中国在出价清单中提出了三种过渡性措施：在履行《政府采购协定》之后的 2 年内，对所有实体实行较高的门槛价；中国履行《政府采购协定》之后的 3 年内，分阶段、逐步地在清单列明的省份中三分之二（10 个）的省份推进适用协议；中国在加入《政府采购协定》3 年后开始履行协议。

为了方便发展中国家加入，《政府采购协定》允许使用过渡性措施，但须经过参加方同意。上述措施包括价格优惠、补偿交易和特定实体或行业分阶段、逐步适用协议，以及暂时提高门槛价等。《政府采购协定》还允许延迟执行特定条款，但并不允许申请加入国在加入协议后推迟履行整个协议。

### 中国加入《政府采购协定》现状综述

2001 年 12 月，中国加入世贸组织时，宣布其有意成为《政府采购协定》的缔约国，并提交了采购出价单，表示将尽快加入《协定》。六年后，在 2007 年底，中国开始了加入《政府采购协定》的进程。现在，在宣布加入世贸组织 17 年后，中国应该通过加入《政府采购协定》来证明自己世界贸易组织的承诺。中国应该借此机会来为其他 WTO 成员国树立正面典范，其他 14 个 WTO 成员也作出

deferred implementation of specific provisions. However, it does not allow for an acceding country to delay its entire implementation of the agreement after its accession.

### *Overview of Status of China's GPA Accession*

In December 2001 when China became a WTO member, it declared its intention to become a party to the GPA and to table an offer of the procurement that it would cover under the Agreement "as soon as possible." Six years later, at the end of 2007, China commenced its accession process. Now, 17 years after its initial announcement, China should demonstrate its commitment to the WTO by completing its accession to the GPA. China should take the opportunity to serve as a positive model to the 14 other WTO members that made similar commitments as part of protocols of accession to the WTO: Afghanistan, Albania, Former Yugoslav Republic of Macedonia, Georgia, Jordan, Kazakhstan, Kyrgyz Republic, Mongolia, Oman, Panama, Russian Federation, Saudi Arabia, Seychelles and Tajikistan.

The WTO Committee on Government Procurement noted in its 2017 Annual Report, as it had in its 2016 Annual Report, that it "remains of the view that China's GPA accession, on mutually agreeable and appropriate terms, is a matter of significance for the Agreement, for the WTO, and for the world economy; and an important signal for other emerging economies." It also expressed the hope "that a further revised offer will be circulated by China as soon as possible in 2018 and that further progress on this accession will follow."

Through its offer in 2014, China has moved closer to the coverage given by the GPA parties. Its permanent thresholds are the same as those used by two or more parties. Its central government entity coverage is generally in line with that of the GPA parties, with the exception of its exclusion of defense entities. China's coverage of sub-central government entities and other entities is generally comparable to the coverage of the GPA parties that base their coverage on a list of covered entities. China's services offer follows most parties in its use of a positive list and appears to offer generally comparable coverage. On construction services, however, China's offer falls short of the comprehensive coverage of the parties.

If China removes the proposed transitional measures and exclusions, and makes certain improvements, as discussed in the following section, we believe that China could be able to conclude its accession to the GPA in 2018.

### **Measures to Support China's Accession to the GPA**

China's most recent offer has increased the possibility of concluding its accession negotiations. If China were to focus on closing the remaining gaps and improving its existing offer in the key areas identified below, it could increase

the possibilities for its accession to the GPA and find a way forward from the current stalemate.

### *Additional Provinces*

China's coverage of 15 of its 22 provinces and all four provincial-level municipalities (Beijing, Chongqing, Shanghai and Tianjin) is generally comparable to that of GPA parties, such as the US. However, its coverage falls short when compared to parties like the EU, which provides more comprehensive sub-central coverage. As a result, China should at least ensure that its list includes all of the most important provinces. For example, Sichuan is a large, economically significant province that is currently missing from China's offer. In addition, China should also include less-developed provinces where significant government investment and infrastructure projects are currently taking place, such as Qinghai and Gansu.

### *Additional Services and Construction Services Coverage*

If China insists on basing its services and construction services coverage on a positive list, our members suggest that China engage in dialogue with US industries through AmCham China in order to ensure meaningful coverage and receive support from the US. Services that China should consider covering that are of importance to US industries include the following:

- All financial services, including insurance, banking, and e-payment services.
- All construction, engineering, equipment installation, and design services and construction-related consulting services.
- Express delivery services.
- Healthcare services.
- All information and communications technology services.
- Media and entertainment services.
- Real estate services.
- Retail and e-commerce services.
- Accounting, auditing, and bookkeeping services and services related to management consulting.

### *Eliminating Broad Exceptions*

AmCham China also urges China to eliminate the exception that would reserve China's right to deviate from national treatment principles when a specific procurement may "impair important national policy objectives." Moreover, China should eliminate the exception that would enable it to require the incorporation of domestic content, offsets, or transfer of technology in any procurement, which would be contrary to the GPA's general prohibition of offsets.

类似承诺作为加入世贸组织的条款：包括阿富汗、阿尔巴尼亚、前南斯拉夫的马其顿共和国、格鲁吉亚、约旦、哈萨克斯坦、吉尔吉斯共和国、蒙古、阿曼、巴拿马、俄罗斯、沙特阿拉伯、塞舌尔和塔吉克斯坦。

类似 2016 年年度报告，世贸组织政府采购委员会在其 2017 年年度报告也指出，“仍然认为，中国在互相认可、合适的条件下加入 GPA，无论对于《政府采购协定》，世贸组织，还是世界来说都意义非凡；也是其他新兴经济体的一个重要信号”。还表示希望“中国将在 2018 年尽快提交修订后的出价单，并取得进一步进展”。

在 2014 年的出价清单中，中国的采购范围与《政府采购协定》参加方进一步趋同。该清单中的永久性门槛价与两个或多个参加方一致。中央政府实体范围也与《政府采购协定》参加方基本相当，但排除了国防实体。中国所界定的次中央政府实体和其他实体与同样列明采购实体的《政府采购协定》参加方基本相当。中国给出的服务采购项目与绝大部分采用正面清单的参加方保持一致，覆盖范围也基本相当。但在工程服务方面，中国的清单内容却远不及协议参加方那样广泛全面。

如果中国能够取消出价清单中有关过渡性措施和例外情形等内容，并就下文所讨论的内容加以改进，中国有望在 2018 年完成加入《政府采购协定》的工作。

## 支持中国加入《政府采购协定》的措施

中国提交的最新版出价清单极大地提高了中国完成加入谈判的可能性。如果中国能够着重缩小下文所述的少数关键领域内仍然存在的差距，改进现有出价清单，或可为其加入《政府采购协定》增加机会，打破当前僵局。

### 增加省份

中国出价清单中次中央实体包括 22 个省份中的 15 个，外加 4 个直辖市（北京、重庆、上海和天津），范围与《政府采购协定》参加方如美国基本相当，然而与欧盟等更为广泛地划定次中央实体范围的参与方相比，还存在差距。因此，中国应当至少确保次中央实体名单中包括中国所有最重要的省份。例如，面积广大、经济地位高的四川省目前就不在清单之列。另外，中国应当尽量将大规模开展政府投资和工程建设的部分欠发达省份，如青海省和甘肃省，也纳入政府采购次中央实体名单。

## 扩大服务和工程服务采购项目范围

如果中国坚持采用正面清单限定政府采购服务和工程服务项目的范围，商会恳请中国政府通过商会与美国相关企业开展对话，从而合理地划定上述范围，取得美方的支持。商会建议中国应当考虑纳入清单的且对美国企业较为重要的服务行业如下：

- 全部金融服务业，包括保险业、银行业和电子支付服务业；
- 全部工程、机械、设备安装、设计服务和工程相关的咨询服务；
- 快递服务业；
- 医疗服务业；
- 全部信息通信技术服务业；
- 传媒和娱乐服务业；
- 房地产业务；
- 零售和电子商务服务业；
- 会计、审计和记账服务业以及管理咨询相关服务业。

## 取消宽泛的例外情形规定

商会还促请中国取消对于“有可能损害国家重要政策目标”的特殊采购，保留不执行国民待遇的权利这一例外情形规定。另外，商会建议取消“中国有权对政府采购项目的本国比例、补偿交易或技术转移提出要求”这一例外情形规定，因为这种保留措施违背了《政府采购协定》“不得采用补偿交易”的规定。

## 取消过渡性措施

商会促请中国取消上文中提到的 3 项过渡性措施提案，因为上述措施会导致中国在加入《政府采购协定》数年后才开始全面执行协议。考虑到中国目前较高的经济地位，中国采取上述过渡性措施的理由较难成立。

## 明确国有企业的范围

尽管中国在最新修改报价清单的采购实体中增列了几家国有企业，商会还是促请中国政府将出于治理目的而定期进行采购（即不以商业销售或转售为目的，或不用于以商业销售或转售为目的的生产或服务）的大型国有企业纳入实体清单。商会再次建议中国政府通过以下方式明确自



## *Eliminating Proposed Transitional Measures*

AmCham China urges China to drop the three types of transitional measures it has proposed, as discussed above. Such measures would delay China's overall implementation of the agreement for many years after its accession. Moreover, given China's high economic status, it would be difficult to justify China's use of transitional measures.

## *Clarifying Coverage of SOEs*

Although China added a few SOEs to its list of covered entities in its most recent offer, our members nevertheless urge China to take steps to include major SOEs that appear to procure regularly for governmental purposes (i.e., not for commercial sale or resale purposes, or for use in the production or supply of goods or services for commercial sale or resale). AmCham China encourages the Chinese government to clarify its position on SOEs through one of the following ways. First, a clear directive could be issued confirming that SOE purchases are non-government procurements that are based solely on commercial considerations. This would be in line with China's commitments regarding the commercial independence of SOEs in the Working Party Report during its accession to the WTO. Second, China could expand GPA coverage to include additional major SOEs that procure for governmental purposes.

China should submit a new revised offer early in 2018 that addresses these deficiencies in its coverage offer, which would be a basis for GPA parties to approve the terms of its accession. AmCham China urges the US government to work with the EU and the other GPA parties to encourage and facilitate China's GPA accession in 2018.

## **China's Domestic Procurement Regime**

### *Transparency in Government Procurement*

On April 25, 2017, MOF released the "Circular on Further Implementing the Matters concerning the Disclosure of Information on Government Procurement" (2017 Circular). The 2017 Circular urges government agencies to improve information disclosure practice in procurement activities through various channels, such as the network platform for releasing government procurement information, in order to streamline the work mechanisms for information disclosure, as well as the assessment and supervision of disclosure procedures.

Also worth noting is the Chinese Government Procurement Service Information Platform, which was officially launched online on October 31, 2017. The Platform provides government procurement information such as procurement policies and interpretations, procure-

ment documents and public tender results, procurement contracts and practice guidance.

Furthermore, following the State Council executive meeting chaired by Premier Li Keqiang on December 6, 2017, China committed to further upgrade government information systems and expand the government's voluntary information disclosure list to include government procurement and other key areas.

AmCham China applauds the continued commitment to improve transparency in government procurement. These developments reflect China's renewed efforts towards the full implementation of its previous commitments. We look forward to seeing more statements of this kind at the national and local levels.

### *Improved Communication Channels*

On December 26, 2017, MOF released the "Measures for Challenges to and Complaints about Government Procurement" (Measures), to be effective March 1, 2018. These Measures are aimed at protecting the rights and interests of parties participating in government procurement activities, and outline procedures to bring complaints, claims or even lawsuits against the buyer agency. The new Measures also provide a formal communication channel to address issues in the government procurement procedure and encourage legitimate demands. This in turn will help to build a more transparent government procurement market in China.

### *Impact of the Cybersecurity Law*

On June 1, 2016, the Cybersecurity Law and its implementing measures took effect. This law requires entities in certain important industries to ensure that their technology systems are "secure and controllable." To procure important network products and services relating to national security, the buyer needs to conduct self-inspection and/or pass cyber security inspections from industry regulators or the cybersecurity regulator. Although the Chinese government has repeatedly stated that the Cybersecurity Law is not meant to restrict foreign technology and products, the IT and semiconductor industry has been concerned with its negative impact on a fair and transparent government procurement system. The worry is that foreign technology and products will be treated unfairly in the procurement process. AmCham China encourages the Chinese Government to further clarify the issues in the enforcement of the Cybersecurity Law and ensure that all suppliers will be treated equally during the government procurement process.

己对国有企业的立场。第一：颁布明确的行政条例，规定国有企业采购仅考虑商业因素，而不属于政府采购。该条例符合中国在加入世界贸易组织工作方报告中，有关国有企业商业独立性的承诺。第二：扩大政府采购实体范围，将出于治理目的进行采购的大型国有企业纳入中国的下一份出价清单中。

中国应在 2018 年初提交一份新的出价清单，以解决其覆盖范围内的这些不足之处，这将是《政府采购协定》参加方批准中国加入的基础。商会促请美国政府与欧盟和其他《政府采购协定》参加方全面合作，以鼓励和促进中国在 2018 年加入《政府采购协定》。

## 中国国内采购体制

### 政府采购的透明性

2017 年 4 月 25 日，财政部发布《关于进一步落实政府采购信息披露事项的通知》。2017 年通知促请政府机构通过各种渠道，如发布政府采购信息的网络平台等，改善采购活动的信息披露，以精简信息披露工作机制，并对披露程序进行评估和监督。

同样值得注意的是中国政府采购服务信息平台于 2017 年 10 月 31 日正式上线。该平台公布采购政策和解读、采购文件和公开招标结果、采购合同和实践指导等政府采购信息。

此外，国务院总理李克强于 2017 年 12 月 6 日主持召开国务院常务会议之后，中国承诺进一步升级政府信息系统，扩大政府自愿性信息披露清单，以将政府采购和其他关键领域纳入其中。

商会对提高政府采购透明度的承诺表示赞赏。这些进展反映了中国为全面履行其先前承诺而做出的新努力。商会期待在国家和地方层面看到更多这类声明。

### 沟通渠道的改进

2017 年 12 月 26 日，财政部发布《关于政府采购的挑战和投诉的措施》（措施），措施将于 2018 年 3 月 1 日生效。这些措施的目的是保护参与政府采购活动各方的权利和利益，以及提出申诉、索赔甚至起诉买方机构的程序。新措施还提供了一个正式的沟通渠道，以解决政府采购程序中的问题，并鼓励合理的要求。这反过来将有助于在中国建立一个更加透明的政府采购市场。

## 《网络安全法》的影响

2016 年 6 月 1 日，《网络安全法》及其实施措施生效。这项法律要求特定重要行业的实体确保其技术系统“安全可控”。要采购与国家安全有关的重要网络产品和服务，买方需要进行自我检查和或通过行业监管机构或网络安全监管机构的网络安全检查。尽管中国政府一再表示，《网络安全法》并不是要限制外国技术和产品，但信息技术和半导体行业一直关注其对政府采购系统的公平和透明性的负面影响。令人担忧的是，在采购过程中，外国技术和产品将受到不公平对待。商会鼓励中国政府进一步澄清《网络安全法》的执行问题，确保所有供应商在政府采购过程中受到平等对待。

## 建议

### 对中国政府：

- 重点缩小以上所讨论的中国第五份《政府采购协定》出价清单中仍然存在的差距，加快加入协议的谈判进程，力争于 2018 年加入《政府采购协定》。[ 商务部、财政部、国资委 ]
- 尽快定稿《政府采购本国产品管理办法》并明确“本国产品”的定义，确保在华经营的所有法律实体，无论所有权结构如何，都能在政府采购程序中得到公平对待。
- 确保不对中央或次中央层面的政府采购活动设定国籍条件和施加限制。

## Recommendations

### *For the Chinese Government:*

- Focus on addressing the remaining gaps in China's fifth revised GPA offer as identified above and accelerate negotiations toward accession to the GPA in 2018. [MOFCOM, MOF, State-Owned Assets Supervision and Administration Commission]
- Finalize the "Administrative Measure for the Government Procurement of Domestic Products" and clarify the definition of "domestic product", in order to ensure that goods and services provided by all legal entities in China will be treated equally during procurement processes, regardless of ownership.
- Ensure that nationality-based conditions and restrictions on government procurement are not imposed at the central or sub-central levels.



# High-Tech Trade Promotion and Export Controls

## Introduction

China is the largest importer of goods from the US and the third largest export destination behind Canada and Mexico. Bilateral trade in goods between the US and China grew from US \$147 billion (RMB 910 billion) in 2002 to almost US \$636 billion (over RMB 4 trillion) in 2017. The total value of advanced technology product exports from the US to China also continues to grow. As the US and China look to capitalize on potential future growth in bilateral high-tech trade, we hope that both countries will work to increase cooperation on export controls to further promote such trade.

Specifically, working cooperatively to address the following export control issues would have a positive impact on high-tech trade cooperation:

- Continuing to address misperceptions by the Chinese government and among Chinese industry representatives about the restrictions imposed by US export controls and their impact on Chinese companies' ability to purchase US-origin goods.
- Reviewing US export control policies and controls in light of foreign and indigenous availability in China, as controls over the export of goods readily available in China can result in the following:
  - ◆ Decreased national security benefits for the US when the same items can be obtained without license domestically or through a license from another country without the same restrictions the US would impose, and
  - ◆ Loss of sales by US firms to foreign competitors, negatively affecting the US defense industrial base.
- Encouraging governments to work with Chinese entities on the US Bureau of Industry and Security's Entity List that have demonstrated a focus on a culture of compliance.
- Revising Chinese export control lists to be more in line with the multilateral export control regime lists (i.e., Missile Technology Control Regime, Nuclear Suppliers Group, Australia Group, and Wassenaar Arrangement), both in structure and in language, and adding a list of items equivalent to the list covered by the Wassenaar Arrangement.

- Promoting the growth of a compliance culture among Chinese businesses to decrease diversion concerns and in turn increase the ability of Chinese firms to acquire certain US export-controlled items.

To assist in addressing these issues, AmCham China and AmCham Shanghai (hereafter referred to collectively as "AmCham") have a joint forum, the Export Compliance Working Group (ECWG), dedicated to facilitating civilian bilateral high-tech trade by promoting industry-government cooperation on export controls, providing additional understanding and education on US-China export control issues, and emphasizing the importance and benefits of transparency and compliance on export controls. This chapter outlines some of the export control issues the ECWG hopes the US and Chinese governments will focus on in the near term.

## Ongoing Regulatory Issues

### US Export Controls

#### *Education and Training*

Export control myths continue to create misunderstandings that result in lost opportunities for US-China high-tech trade. Bringing together qualified commercial importers and exporters working on trade deals and educating them on export controls and the compliance process can be an effective path to debunking these myths and increasing US-China high-tech trade. In fact, many domestic Chinese companies have expressed an interest in learning about internal control processes to enhance their own compliance. Education and training can also help focus government-to-government discussion on the primary issues, such as US license processing times and criteria in relation to other multilateral regime countries. Many companies operate on the incorrect assumption that the US has more license requirements for list-based items than other multilateral regime countries, when in fact the US requires fewer licenses than other multilateral regime members due to license exceptions.

To address any misconceptions, AmCham China has previously facilitated educational seminars for US exporters, Chinese importers, and government officials on how to maxi-

# 高科技贸易促进和出口管制

## 引言

**中**国是美国最大的商品进口国，也是仅次于加拿大和墨西哥的第三大出口目的地国。美中两国双边货物贸易额已从2002年的1470亿美元（9100亿人民币）跃升至2017年的6360亿美元（超过4万亿人民币）。除此之外，获准对华出口的美国高技术产品的贸易总额持续增长。鉴于美中两国都期望从未来的高科技双边贸易增长中受益，中国美国商会（商会）希望两国在出口管制领域加强合作，进一步促进此类贸易的发展。

具体来说，合作解决以下出口管制问题将对高科技贸易合作产生积极影响：

- 中国政府及业内人士对美国出口管制的限制措施及其对中国企业购买美国原产地商品可能性的实际影响存在误解，应继续予以解决。
- 根据外国（第三国）及中国本土是否已有类似产品的情况，审核美国出口管制政策及管制措施，因为对在中国容易获得的商品进行管制可能导致：
  - ◆ 如果可以从本土不经过许可证或通过不受美国管制的第三国的许可证获得同样的产品，美国的国家安全利益将受到损害。
  - ◆ 美国公司的销售份额流向外国竞争者，从而对美国国防工业基础造成负面影响。
- 鼓励政府与列于美国产业与安全局实体名单上的，且已开始关注合规文化的中国实体进行合作。
- 修订中国出口管制清单，使其在结构和语言方面与多边出口管制体系（即导弹及其技术控制制度、核供应国集团、澳大利亚集团和瓦森纳安排）更加一致，并增加一个与瓦森纳安排所涵盖物项相对应的产品清单。
- 促进中国企业合规文化的发展，减少扩散的担忧，从而提高中国企业获取美国出口管制产品的能力。

为了协助解决这些问题，商会和上海美国商会（以下统称“美国商会”）设立了联合工作组——出口合规工作组（ECWG），致力于通过促进行业和政府出口管制方面的合作，推动双边民用高科技贸易的发展，加强对美中两国出口管制问题的交流和理解，并强调出口管制透明度和合规的重要性及益处。本章概述了出口合规工作组希望美中两国政府在短期内能关注的一些出口管制问题。

## 现存监管问题

### 美国出口管控

### 教育和培训

关于美国出口管制的传言导致美中两国高科技贸易机会流失的误解仍持续存在。消除这些传言的有效途径就是对有资质的进出口商进行出口管制和合规流程方面的培训，从而促进美中两国高科技贸易。实际上，许多中国本土企业都表示有兴趣学习更多内控流程知识来提高其自身的合规水平。教育和培训也有助于两国政府关注讨论主要问题，如美国出口许可证处理时间以及与其他多边国家体系相关的标准。许多企业错误地认为和其他多边国家体系相比，美国有更多的产品许可证要求，而事实上，得益于美国许可例外的规定，美国比其他多边国家体系的许可证要求更少。

为消除这些误解，美国商会已推动开展针对美国出口商、中国进口商以及政府官员的培训和交流，如何在合规风险的最小化的前提下，实现商业贸易机会的最大化。然而，由于美中两国政府的预算的限制，难以进行定期且持续性的交流。鉴于该培训项目有助于消除对出口管制的疑虑、开拓新的贸易机会，美国商会促请美中两国政府寻求机遇支持和资助此类项目，并在现有两国政府活动中增加此类培训交流活动。

mize commercial trade opportunities by minimizing compliance risks. Current US and Chinese government budgetary restraints, however, pose a challenge to maintaining a consistent rhythm for these exchanges. AmCham China asks both the US and Chinese governments to look for opportunities to support and fund such programs, as they are necessary to dispel export control myths and open new trade opportunities. In particular, we suggest adding such educational activities to existing bilateral government engagements.

### Foreign Availability and Non-US Suppliers

In some circumstances, US export controls require dual-use export licenses for items that are already available indigenously in China or that may be exported from non-US countries under easily obtainable export licenses. AmCham China believes it is self-defeating for either the US or multilateral regimes to control items that are already available in China. Such restrictions provide no benefit with respect to national security or the non-proliferation of weapons of mass destruction or conventional weapons. We therefore request that the US government review US export control policies and controls in light of indigenous availability in China and work to remove those items that are already produced in China from the multilateral regime lists (except for the Nuclear Suppliers Group, of which China is a member).

Regarding items that are available in China from non-US firms, AmCham China stresses that having items exported under a US export license is of much greater benefit to US national security than if equivalent items are exported from another country. In other countries' export control regimes, the license review process, license conditions, and ongoing controls and monitoring are not the same as those associated with the US export control system. In addition to this direct national security impact, there is a secondary impact related to the economic disadvantage that US companies experience when they lose sales to non-US companies due to dual-use export controls.

Each item that China acquires from a non-US business represents a lost US export opportunity and, in turn, harms US job creation, economic growth, and the stability of the US military industrial base. AmCham China, therefore, requests the US government to review its processing times and approval criteria for issuing dual-use export licenses and to bring these more in line with the practices of other multilateral regime members.

### Entity List

The US Department of Commerce Bureau of Industry and Security has greatly increased the number of Chinese entities on the Entity List over the past few years. AmCham China understands that the US government adds entities to the Entity List only after exhaustive analysis and only when other efforts to resolve the concern have not succeeded.

However, AmCham China would like to see more efforts by both the US and Chinese governments to promote education to assist Chinese entities that demonstrate a commitment to compliance in their efforts towards removal from the Entity List. We recommend that both governments increase their efforts to make channels for outreach available to listed Chinese entities that submit applications for removal from the Entity List to assist such entities in understanding the requirements for being removed.

### *Chinese Export Controls*

#### Chinese Regulatory Reform

In June 2017, MOFCOM released for public comment China's long-awaited draft Export Control Law. It will be China's first law to specifically address export controls. We appreciate China's commitment to providing regulatory transparency in the release of the draft and trust that the Chinese government will review and consider the corresponding submitted comments carefully.

AmCham China, in conjunction with AmCham Shanghai and the US Chamber of Commerce, submitted comments in response to MOFCOM's release of the draft Export Control Law. In the submitted comments, we raised a number of concerns for MOFCOM to consider when finalizing the law. Below are some of the key points:

- We urge that the focus of the draft Export Control Law be confined to regulating the export of items for the purpose of preventing the proliferation of nuclear, chemical, and biological weapons and the delivery systems capable of delivering such weapons.
- We hope that China will include controls on conventional weapons in alignment with the Wassenaar Arrangement.
- We emphasize the importance of focusing on non-proliferation and national security concerns in the Export Control Law and eliminating references to terms such as "economic development" and "industrial competitiveness."
- We recommend that, in the process of formulating a dual-use list, the competent authorities utilize a similar alpha-numeric designation as used in many other countries' export control regimes based on the nature of the product (i.e., type of commodity, software, or technology and its respective technical parameters).

Although there is no timeline for finalizing the law, it will be helpful if MOFCOM clarifies key questions from industry during the draft hearing process, perhaps through a seminar, conference, or a release of official Frequently Asked Questions (FAQs). It is also important for MOFCOM to offer easily accessible export control enquiry channels at both the central and provincial/city levels for industry to have access to timely feedback and guidance.

## 外国产品的可用性和非美国供应商

在某些情况下，美国出口管制政策对于中国已经能够自主生产或通过简单手续即可从美国之外的国家获得许可证并出口的产品，仍然要求两用产品出口许可证。美国商会认为，美国及多边体系对中国已能自主生产的产品进行管控将适得其反。这种限制既不会为美国提供安全保障，也不会有助于防止常规武器及大规模杀伤性武器的扩散。因此美国商会促请美国政府根据中国本土产品及非美国产品可用性的情况来评估美国出口管制政策和管制措施，并努力从多边体系清单中去除中国自主生产的产品（中国作为成员国之一的核供应国集团除外）。

对于中国从美国之外的国家进口的产品，美国商会强调，相比中国从另一个国家进口同等产品，从美国进口已取得美国出口许可证的此类产品对美国国家安全更有利。在其他国家出口管制制度中，许可证审核流程、许可证的授予条件以及持续管制和监控均不等同于美国出口管制制度的相关规定。除造成直接国家安全影响之外，还会因两用物项出口管制导致销售份额流向美国以外企业，对美国企业所经受的经济劣势再次造成影响。

中国每次从美国以外的企业进口一个产品，就表明美国丧失了一次出口机会，进而对美国就业、经济增长和美国军事工业基础的稳定造成损害。因此，美国商会促请美国政府核查许可证处理时间和颁发两用物项出口许可证的标准，使该流程更加符合其他多边体系成员的做法。

## 实体名单

美国商务部产业与安全局在过去几年大幅增加实体名单上中国实体的数量。美国商会理解美国政府只有在进行了详尽分析并通过其它努力不能解决问题时才将这些实体加入实体名单。然而，美国商会希望美中两国政府进一步促进教育，从而协助承诺合规并付诸行动的中国实体从实体名单中去除。美国商会建议美中两国政府加大力度，为那些申请从实体名单中去除的中国实体提供可用的渠道，以帮助它们了解相关的要求。

## 中国出口管制

### 中国两用物项管制的改革

2017年6月，商务部公布了中国期待已久的《出口管制法草案》征求意见稿。这是中国起草的第一部专门针对出口管制的法律。商会赞赏中方承诺在发布草案中提供监

管透明度，并相信中国政府将认真参考和审议各行业、机构提交的相应意见。

中国美国商会连同上海美国商会和美国商会，就商务部发布的《出口管制法草案》提交了相应的意见。在这些意见中，美国商会提出了一些商务部在最终确定法律时应予以考虑的问题。以下是一些要点：

- 商会促请将《出口管制法》草案的重点限于管制物品的出口，以防止核武器、化学武器、生物武器及能够承载这些武器的运载系统的扩散。
- 商会希望中国对常规武器的管控与瓦森纳安排相一致。
- 商会强调在《出口管制法》中关注防扩散和国家安全问题的重要性，删除对“经济发展”和“产业竞争力”等术语的引用。
- 商会建议在制定两用物项清单的过程中，主管当局根据产品的性质（如商品种类、软件或者技术和其相关技术参数）使用与许多其他国家的出口管制制度相同的字母及数字的出口管制编码标识。

虽然没有正式出台《出口管制法》的时间表，但如果商务部在听证过程中，通过召开研习会、发布官方常见问题（FAQs）或其它方式澄清行业提出的关键问题，将会对法律的推行非常有帮助。另外，如果商务部能够在各省市级地方主管部门为行业提供出口管控各项新规的咨询渠道，及时的反馈和指导，也将是非常有益的。

## 两用物项的转移

中国出口管制法律法规缺乏透明度，继续导致人们担忧产品是否转移到有危害的最终用户或最终用途（如：担心武器扩散与恐怖主义的实体和国家）。美国商会促请中国官员主动与美国政府沟通，进一步解释其出口管制体系的详细流程，尤其是关于政策的执行层面。

美国商会还请求中国政府向在中国拥有业务的美国企业加大推广和培训力度。清晰透明的中国出口管制体系对中美关系至关重要，这会有助于美国企业更全面、更有效地遵守中国出口管制法规。此外，美国商会还促请中国政府明确区分国有企业的民用项目和军用项目，确保两用物项产品不会从民用项目转为军用项目，从而影响高科技商业贸易。



### *Diversion of Dual-Use Items*

The lack of transparency in China's export control laws and regulations continues to cause concern regarding the diversion of items to harmful end-users or end-uses (e.g., entities and countries of proliferation and terrorism concerns). AmCham China recommends that Chinese officials reach out to the US government, among others, to further explain the detailed processes of its export control system, especially as they relate to enforcement.

AmCham China also requests the Chinese government to conduct more outreach and training to US industry with a presence in China. A clear and transparent Chinese export control system is critical for US-China relations and will help US-based companies comply more completely and effectively with Chinese export controls. In addition, we urge China to clearly separate civilian and military programs in state-owned entities, to ensure dual-use items are not diverted from civil to military programs, thereby constraining high-tech commercial trade.

### *Joining Multilateral Regimes*

China's absence from influential multilateral regimes has a negative impact on high-tech trade between the US and China, as China's control lists are not aligned with all of the multilateral lists, especially the Wassenaar List. Full membership would put China on par with its biggest trade partners and have a positive impact on high-tech exports from the US to China. AmCham recommends that the Chinese government actively pursue membership in these multilateral export control regimes, including the Australia Group and the Missile Technology Control Regime, while also taking an active leadership role in the multilateral regimes of which it is already a member.

#### *For the Chinese Government:*

- **Conduct greater outreach to Chinese companies to promote the implementation of compliance programs and transparency as a way to obtain US high-tech strategic items.**
- Consider carefully industry's comments on China's draft export control law.
- Revise Chinese export control lists to more closely align with the multilateral lists, both in structure and in language, and add a list of items equivalent to the list covered by the Wassenaar Arrangement.
- Improve transparency of China's export control system and conduct more outreach to and training of US industry with a presence in China on China's export controls.
- Work with Chinese entities on the Entity List that have demonstrated a focus on a culture of compliance to meet fully the legal requirements for removal from the list.
- Support high-tech trade promotion initiatives in the US and China by providing funding, speakers, and support from relevant policy makers and agency officials.
- Seek to join additional multilateral export control regimes.

## Recommendations

#### *For the US Government:*

- **Support high-tech trade promotion initiatives in the US and China by providing funding, speakers, and support from relevant policy makers and agency officials.**
- Provide educational opportunities and outreach channels for Chinese entities on the Entity List that have demonstrated a focus on a culture of compliance.
- Take into account the availability of items in China from both domestic and foreign sources as the US government moves into phase three of the export control reform.

## 加入多边体系

由于中国尚未加入具有影响力的多边体系，中国的管制清单与多边清单不一致，尤其是瓦森纳安排，这对美中两国的高科技贸易造成了负面影响。成为其正式会员可使国际社会对中国及其重要的贸易伙伴们一视同仁，从而对美国向中国的高科技出口产生积极影响。美国商会建议中国政府能够积极加入这些多边出口管制体系，包括澳大利亚集团、导弹及其技术管控制度，同时也在已成为会员的多边体系中发挥积极的领导作用。

- 通过提供资金、宣讲人，并由相关决策部门和机构的官员给予支持，推进美中高科技贸易的倡议。
- 寻求加入更多的多边出口管制体系。

## 建议

### 对美国政府：

- 通过提供资金、宣讲人，并由相关政策制定部门和机构的官员给予支持，从而推进美中高科技贸易的倡议。
- 为实体名单上的、已开始关注合规文化的中国实体提供教育机会和有效渠道。
- 美国政府在进出口管制改革第三阶段时，应考虑到中国是否可以从国内和国外来源获得相应的产品。

### 对中国政府：

- 加强与中国企业的沟通，从而促进企业合规计划的实施，且提高透明度，藉此获得美国的高科技战略产品。
- 仔细考虑各行业对中国出口管制法律草案的意见。
- 修订中国出口管制清单，使其在结构和语言方面与多边清单更紧密一致，并增加一个与瓦森纳安排所涵盖物项相对应的产品清单。
- 提高中国出口管制体系的透明度，加大对在中国拥有业务的美国企业在中国出口管制制度方面的推广和培训力度。
- 与被列于实体清单上的，且已经开始关注合规文化的中国实体合作，帮助这些实体付之行动，使其满足将其从名单中去除的法律要求。

# Human Resources

## Introduction

**A** strong, talented workforce is critical for the continued growth of domestic and US businesses across China. Understanding the different motivations for employees' work choices is crucial, especially as the needs of companies change with the onset of new technologies, new business models and growing expectations in a service economy.

This chapter reviews developments in China's human resources policy and assesses their implications for the local workforce. It also discusses the initiatives and employee benefits that would be valuable to the country's growing talent pool.

## Recent Developments

### *Prolonged Retirement Proposal*

The Third Plenary Session of the 18th Party Central Committee in 2013 addressed the issue of an ageing population by formally proposing a study on incrementally raising the retirement age. The Committee approved the policy, despite wide controversy, stressing the urgency of extending the retirement age. In 2015, the Ministry of Human Resources and Social Security (MOHRSS) began to review the Labor Insurance Regulations, which have been in effect for 60 years and set the retirement age at 60 for men and 50 or 55 for women.

MOHRSS Minister Yin Weimin set out a rough timetable for the policy. The measure was to be formulated in 2015, while public comment would be solicited after approval by the central government in 2016. The new policy would then officially be rolled out in 2017 for implementation in 2022. However, the policy is still under study. As a large portion of society would be affected by the retirement proposal, the measure is likely to trigger widespread concern. Moreover, different circulated versions regarding specific methods to implement extension of the age of retirement were immediately refuted. AmCham China urges MOHRSS to release regular reports on progress through official channels to improve people's awareness, familiarity, and acceptance of

the policy. This will reduce speculation and avoid unnecessary uncertainty caused by misinformation and misinterpretation.

Although the extended age of retirement has yet to be approved, some local governments have shown their support for the concept. For example, Shanghai released a retirement plan in 2010 that allowed a maximum five-year extension of the retirement age while employees remain enrolled in pension programs, subject to termination at the employer's discretion. It also defined the extension as "Service Relations," instead of "Labor Relations." In Beijing and Dalian, the legal relationship between enterprises and employees who have reached retirement age and their rights and obligations during the enrollment period for welfare programs have yet to be clearly defined. AmCham China recognizes that clarifying such rules for either side is not an easy task. However, our members believe that the initiative of a "flexible retirement plan" in Shanghai takes into consideration not only the needs of both enterprises and retirees, but also achieves a better balance by defining their legal relationship and their rights and obligations. This initiative is a significant positive step in fully utilizing employees' potential and improving their personal pension insurance benefits. Shanghai's flexible retirement plan provides a good reference for other cities during the transition period. AmCham China hopes similar innovative measures will be implemented in other cities.

Given China's current national conditions and the far-reaching impact of a delayed retirement plan, AmCham China recommends further deliberation and planning. Our members encourage the government to release additional guidance on new retirement measures in consultation with industry associations. This could include providing employers flexibility to allow extended retirement at their discretion, developing an optimized channel to invest social insurance funds to ensure profitability, and providing employers with tax reductions or rebates to encourage investment in commercial insurance or developing long-term savings plans.

### *Judicial Interpretation on Labor Disputes*

No additional information has been released since the Supreme People's Court's draft version of its "Fifth Interpretation of Labor Disputes" (the Interpretation) was

# 人力资源

## 引言

一支强大且有才能的员工队伍对于中国国内和美国在华业务的持续增长至关重要。理解员工工作选择的不同动机至关重要，尤其是公司的需求随着新技术、新业务模式和服务经济中不断增长的期望而变化。

本章回顾了中国人力资源政策的发展，并对其对当地劳动力的影响进行了评估。还讨论了对中国日益增长的人才库有价值的举措和员工福利。

## 最新进展

### 延迟退休方案

2013年党的十八届三中全会正式提出了逐步提高退休年龄，以解决人口老龄化问题。中央委员会批准了该政策，尽管“延迟退休”广受争议，延迟退休政策势在必行。2015年，人力资源和社会保障部（“人社部”）审查了施行了近60年的《中华人民共和国劳动保险条例》（根据条例，男性退休年龄为60岁，女性退休年龄为50岁或55岁）。

2015年两会期间，人社部尹蔚民部长透露了大致时间表。2015年争取完成方案制订，2016年经报中央同意后征求社会意见，新政策将在2017年正式推出，预计于2022年开始正式实施。但具体方案仍处于研究制定过程中。

因延迟退休方案所涉人群甚广，该方案很可能引发社会的广泛担忧。此外，已经有多个在网上流传的延迟退休年龄具体办法的版本被驳斥。中国美国商会（商会）促请人社部通过官方渠道定期公布进展，一来提高民众对延迟退休的认知度、熟悉度、接纳度，巩固与民众的沟通连接，二来也有助于消弭各种猜想，避免信息不对称或曲解引发不必要疑问。

虽然“延迟退休”尚未被批准，但我们也看到有些地

方政府对这一概念表示了支持。比如上海在2010年公布了“柔性退休”方案，允许在企业与退休员工自愿情况下延迟五年退休，延迟期间继续参加养老保险，并界定了延迟退休期间为“劳务关系”而非“劳动关系”。而在北京市、大连市，企业与已达退休年龄的员工在继续缴纳社保期间，双方的法律关系、权利义务还尚未明确规定。商会认识到向各方澄清这些规则并非易事，然而商会会员相信上海的“柔性退休”方案中一系列创新举措，不仅满足了企业与退休人员的需求，更通过界定其法律关系和权利义务实现了更好的平衡。这一举措是充分利用员工潜力和提高个人养老金保险福利的重要的积极的步骤。上海柔性退休方案给其他城市在过渡期间提供了很好的借鉴，商会期待看到其他城市实施类似的创新举措。

基于中国现阶段的基本国情和延迟退休方案的深远影响，商会理解该方案仍需要一段时间深思熟虑的筹划。商会会员鼓励中国政府进一步征求各行业协会的意见，发布关于新退休政策的指导意见，包括允许用人单位灵活审慎地审批雇员延迟退休、为社保基金提供一个优化的能够确保盈利的投资渠道、通过减税和退税鼓励用人单位投资商业保险和制定长期储蓄计划。

### 劳动争议司法解释征求意见稿

从2015年3月最高人民法院在网上发布了《劳动争议司法解释（五）》（《解释》）征求意见稿至今，未见发布进一步消息。商会将继续监督《解释》，尤其是以下着重提出的条款：

#### 用人单位延迟提交证据

用人单位在仲裁过程中无正当理由未提交证据的，可能需要承担不利后果。诉讼阶段提交的证据须接受法院的受理。这一规定使得法院在决定延迟提交证据是否有正当理由时有较大自由裁量权。因此，需要明确什么情形下延迟提交证据才算有正当理由。

released for public comment in March 2015. AmCham China will continue to monitor the Interpretation, particularly with regard to the clauses highlighted below:

### *Employer's Late Submission of Evidence*

If an employer fails to submit evidence during labor arbitration without justifiable reason, the case may be subject to unfavorable consequences. Evidence submitted during litigation is subject to court acceptance. This clause leaves the court significant leeway to decide whether a late submission is justified. A clear definition of what constitutes a justifiable late submission is needed.

### *Three Categories of Labor Dispatch Positions Excluded from the Scope of Labor Disputes*

The court deemed the definition of a position as “temporary,” “auxiliary,” or “supplementary” is beyond the scope of a labor dispute and that courts will not rule on such claims. AmCham China believes that, rather than intervening in daily enterprise management, the court should focus on legal interpretations and applications in larger issues.

### *Clarification of Criteria to Identify Cases of “Fake Outsourcing”*

Regarding cases where labor dispatch takes place under the guise of outsourcing, the seller’s scope of business is deemed irrelevant, and instead it is the “buyer” who determines the work time and place and provides the labor materials. However, AmCham China has noticed that under some circumstances, the worker may need to enter the buyer’s place of work physically to provide security and cleaning services. It is not easy to separate employees’ work from the buyer’s place of operations. The draft needs to formulate a more comprehensive matrix to distinguish labor dispatched under the guise of outsourcing.

### *Support of Employer's Right to Adjust Employee Position and Workplace*

The Interpretation supports the employer’s right to adjust an employee’s position and workplace for lawful reasons and does not support an employee’s claim to severance under such circumstances. AmCham China welcomes this step as it is not unusual, after the termination of a position, for an employer’s offer of the same or a similar position (e.g., in terms of pay, scope, responsibilities) to be rejected by employees who then bargain for severance. This does not foster company productivity or employment stability.

### *Employee Discretion to Set Permanent Contract Terms After a Second Fixed-Term Contract*

Currently, only Shanghai grants employees an additional opportunity to refuse contract renewal following the expiration of a second fixed term. If this new rule becomes effective

nationwide, Shanghai’s approach will likely be subject to further review to ensure consistency with the Interpretation. A consistent nationwide approach on this issue is needed in order to minimize misunderstanding and the frequent need to clarify policy with local governments.

### *Flexible Solution to the Suspension of Contracts Under Special Circumstances*

The Interpretation introduces useful examples under which a contract may be suspended. For instance, in cases when an employee is deprived of personal liberty owing to a suspected illegal act, mutual agreement by the parties, or extraordinary circumstances beyond the control of the parties. This clarification is welcomed and will grant employers greater flexibility to address particular circumstances, such as when new hires go on sick leave during their probation period and cannot be adequately evaluated, or employees cannot perform their duties owing to investigation by the authorities. It also provides support to employers with respect to non-payment of remuneration by ceasing social insurance contributions and not allowing a suspension period to be deemed as a valid service year.

## Ongoing Regulatory and Other Challenges

### *Rising Labor Costs*

Rising labor costs continues to rank among the most difficult challenges faced by AmCham China. In the 2017 Business Climate Survey, 65% of respondents cited rising labor costs as a top challenge to their business in China.

The continued economic slowdown has done little to relieve the upward pressures on compensation. In 2017, the average actual merit pay increase in China was 6.4 percent. According to an AON Hewitt survey, after a slowdown in merit pay increases between 2014 and 2017, a higher increase is expected in 2018. In that year, merit pay is expected to rise 6.5 percent as the demand for workers in China exceeds the overall supply, and employers seek to be more competitive in the labor market.

In 2017, the authorities introduced a cap at three times the social average wage on the disability fund. However, the relief resulting from this change is minimal as implementation is not yet consistent across provinces.

In addition, domestically-invested companies are catching up with the significant Long-Term Incentive (LTI) for executives, and there is also a clear trend for top talent at MNCs to move to local companies. This has resulted in MNCs having to increase compensation packages to attract and retain their top employees, making China even more expensive for management to fill such positions. Meanwhile, the high individual income tax rate in China, special Hukou quotas in some SOEs, and

### **三类劳务派遣岗位认定不在劳动争议受理范围内**

人民法院认为与“临时性”、“辅助性”或者“替代性”岗位认定有关的争议不属于劳动争议，将不予受理。商会认为，法院应当将重点放在重大问题的司法解释和适用上，而不是在干预企业日常管理上。

### **明确“假外包”的认定标准**

对于真派遣假外包，“卖方”的经营范围与之无关，决定工作时间和地点以及提供劳动材料的是“买方”。但是，商会注意到，在有些情况下，例如，为了提供安全和保洁服务，外包劳动者需要亲身进入“买方”的工作场所。因此，很难将员工的工作与“买方”的运营场所分离。这就需要制定一个更加全面的标准体系，用于确认以外包名义派遣的劳动者。

### **支持用人单位调整岗位和工作场所的权利**

《解释》支持用人单位合法调整劳动者的岗位和工作场所，不支持劳动者据此提出离职补偿要求。商会对这一规定表示赞赏，因为某一岗位终止之后，劳动者通常拒绝用人单位提供的类似或相同的岗位（例如，类似或相同工资，工作范围或职责）并因此要求离职和获得补偿。这无助于企业提高生产率或者保持用工的稳定性。

### **劳动者连续订立二次固定期限劳动合同后，有权要求订立无固定期限劳动合同**

目前，只有上海允许用人单位在第二个固定期限劳动合同期满后有权选择不予续约。如果这一新规在全国范围内实施，上海就可能需要进一步审视自己的做法，确保与《解释》保持一致。这一问题需要有一个全国统一的解决方案，才能尽量减少误解，以免地方政府不时需要出面澄清政策。

### **灵活处理特殊情形下的劳动合同终止**

《解释》列出了可以中止劳动合同的一些情形。例如，劳动者因为涉嫌违法犯罪被限制人身自由的，双方当事人协商一致的，或者双方无法控制的特殊情形。这一规定可以让用人单位更加灵活地处理一些特殊情形。例如，新员工因为在试用期内请病假而不能接受充分评估的，或员工因为接受有关部门的调查而无法履行职责的。《解释》还支持用人单位可以不支付劳动报酬并停止缴纳社会保险费，并且劳动合同中止期间不允许被计算为劳动者在用人单位的工作年限。

## **现存监管挑战及其他挑战**

### **劳动力成本上升**

商会面临的最艰难的挑战之一是劳动力成本上涨继续居高不下。2018年《商务环境调查报告》显示，65%的受访者认为劳动力成本上涨是他们在华业务面临的巨大挑战。

经济持续放缓不能缓解薪酬上涨的压力。2017年，中国实际绩效薪酬平均增长率为6.4%。根据怡安翰威特咨询公司的调查，预计在2014年至2017年薪酬增长放缓之后，2018年将有更高的增长。2018年由于中国工人的需求超过总体供应量，绩效薪酬预计将上涨6.5%，而雇主则力图在劳动力市场上表现地更具竞争力。

2017年，中国政府对残疾人就业保障金设置了上限，是2017年社会平均工资的3倍。然而，这种变化带来的缓解很小，因为各省的执行情况并不一致。

此外，本土投资的公司正逐渐采取意义显著的高管长期激励策略(LTI)，跨国公司的顶尖人才转向本地公司的趋势也很明显。这导致跨国公司不得不增加薪酬来吸引和留住高级员工，这使得中国的管理层填补这些职位的成本更高。同时，中国个人所得税税率偏高，部分国有企业特殊户口配额，以及跨国公司严格合规和长期激励计划控制等因素加剧了这种情况。

一些公司的报告显示，由于中国生活质量问题导致成本压力增加。污染、交通和食品安全问题引起人们对意外和疾病的担忧。公司可能需要花费更多的资金，以吸引合格的人才到中国工作。公司还面临增加保护员工健康的投资所带来的与日俱增的公共压力。

不断增长的成本压力同样来源于伴随科技持续发展而不断重组的贸易与劳动力结构。

### **残障人士就业**

2017年3月15日财政部发布了《财政部关于取消、调整部分政府性基金有关政策通知》(财税〔2017〕18号)。《通知》一方面扩大了残疾人就业保障金免征范围，明确工商注册登记未满3年、在职职工总数30人或以下的小微企业，按规定免征残疾人就业保障金；此外还设置了残疾人就业保障金征收标准上限。

“用人单位在职职工年平均工资未超过当地社会平均工资3倍(含)的，按用人单位在职职工年平均

strict compliance and LTI plan controls for MNCs aggravate the situation.

Some companies also reported increasing cost pressure resulting from issues regarding quality of life in China. Pollution, traffic, and food safety concerns create anxiety about accidents and illnesses. Companies may need to spend more money as a result, in order to attract qualified talent to work in China. They also face increasing public pressure to invest more to protect employee health.

The increasing cost pressure also comes from business and workforce restructuring, as technology continues to develop.

### ***Employment of Disabled Persons***

On March 15, 2017 the Ministry of Finance issued the “Notice on the Cancellation and Adjustment of Some Government Funds by the Ministry of Finance (Finance and Taxation (2017)18).” The notice, on one hand, expands the range of exemptions for contributions to disabled persons’ employment security fund (Disability Fund). It states that small and micro enterprises registered to do business for less than three years and employees numbering thirty or fewer are exempt from assessment of disabled persons’ employment security funds. It also sets a cap on the amount of Disability Fund collected from each employer.

“For the employers in which the average enterprise annual salary does not exceed 3 or more times the average social annual salary, the average enterprise annual salary shall be used in the formula to calculate the amount that employers contribute to the disability fund. For employers in which the average enterprise annual salary exceeds 3 or more times the average social annual salary, required contributions to the disability fund shall be levied at three times social average salary. The calculation of average enterprise annual salary shall be carried out in accordance with the relevant provisions on the total amount of salary and salary composition made by the National Bureau of Statistics.”

AmCham China appreciates the Chinese government’s efforts to reduce enterprises’ financial pressure and burdens regarding the Disability Fund, and also acknowledges the government’s willingness to promote and support the employment of disabled persons. However, our members also recognize that reliance on the Disability Fund as the sole means to promote and support the employment of disabled persons is inadequate. We instead suggest that there be a focus on policy support, education and training, and employment mechanisms to connect government, enterprise, and disabled employees. Such measure will do more to resolve the employment problem of disabled persons and realize the goal of creating a harmonious employment environment for disabled persons.

### ***Policy Support***

The “Measures on Levying, Use and Management of Disabled Persons’ Employment Security Fund” (Measures) came into effect in October 2015. While these Measures focus on how to collect contributions to the Disability Fund, they do not adequately specify how the Disability Fund is to be used or the mechanism to supervise the Disability Fund. AmCham China suggests adopting incentives through the Disability Fund that can encourage enterprises to meet the employment standards for disabled persons. For example, our members support efforts to help enterprises recruit disabled persons by reducing the amounts collected for the Disability Fund or by refunding a portion of what had been levied on the company.

### ***Education and Training***

Improving the vocational skills of the disabled to meet the employment needs of enterprises is a core issue for disabled persons seeking employment. AmCham China suggests that education and training be focused on the improvement of occupational skills based on different types of disabilities to meet the actual needs of enterprises. Furthermore, there should be a focus on creating opportunities for full-time employment, rather than on education and training designed for auxiliary and temporary jobs. Professional technical abilities and managerial abilities should therefore be improved, so that opportunities are available for employment in management, professional and technical posts.

### ***Employment Mechanism***

Another important aspect of promoting disabled employment is creating an effective channel for enterprises to recruit the disabled. Currently, there are two main types of modern enterprise recruitment, namely campus recruitment for college graduates in higher education institutions, and social recruitment which is mainly aimed at employees with working experience. AmCham China suggests that the relevant government departments and social organizations, such as human resources, social security departments, and the Federation of the Disabled, establish a platform or effective channels for enterprises to recruit the disabled. This will allow companies to identify and recruit suitable disabled persons on campus and in the talent market in a more effective manner.

### ***Impact of Pollution on Talent Management***

In the Government Work Report delivered at the 19th National Party Congress there was a strong emphasis on “speeding up ecological system reform and building a beautiful China.” AmCham China notes the unprecedented importance given by China to environmental protection. From the perspective of human resources management, this is not only a political, economic and social issue. Rather, pollution control and ecological protection in China are issues that also impact talent management.

工资计征残疾人就业保障金；超过当地社会平均工资3倍以上的，按当地社会平均工资3倍计征残疾人就业保障金。用人单位在职职工年平均工资的计算口径，按照国家统计局关于工资总额组成的有关规定执行”。

商会赞赏中国政府在残疾人保障金上减少企业的财务压力和负担，同时也认可政府在推动、支持残障人士就业的意愿。但是，商会会员也认识到仅仅依靠残疾人就业保障金推动和支持残障人士就业的不足。商会建议从政策倾斜、教育培训、就业机制三个角度入手，连接政府、企业与残障劳动者，解决残障人士就业问题，进一步实现营造残障人士和谐就业环境的目的。

### **政策倾斜**

《残疾人就业保障金征收使用管理办法》自2015年10月施行，其核心主要集中在如何征收残疾人就业保障金上，而没有充分说明如何使用就业保障金或监督就业保障金的机制。

商会建议就残疾人就业保障金应采取一定措施鼓励企业达到残疾人雇用标准，比如商会会员支持通过以减免、返还保障金的方式帮助企业招录残障人士。

### **教育培训**

提高残障人士职业技能以符合企业的用人用工需求，是残疾人就业的核心问题。商会建议应当根据残障类型的不同，有针对性地进行以职业技能提升为目的的教育培训，以满足企业的实际需求而提高残障人士就业的可能性。此外，应当把重点放在创造全职就业机会上，而不是放在辅助性、临时性岗位的教育培训上。因此，残障人士的专业技能能力、管理能力应该得到提升，以全面提高残障人士在管理岗位、专业技术岗位、工勤辅助岗位等多种岗位均有就业成功的可能性。

### **就业机制**

推进残障人士就业的另外一个方面是创造企业招录残障人士的有效渠道。目前，现代企业的人才招聘主要有两种，一种为校园招聘，主要面向高校招聘大中专毕业生；另外一种为社会招聘，主要是面向社会具有一定工作经验的员工。商会建议有关政府部门及社会团体，比如人力资源与社会保障部门及残疾人联合会能够协调搭建残障人士的平台或有效渠道，帮助企业招录残障人士，以便于企业能够以更

有效的方式在校园和人才市场上寻求到合适的残障人士。

### **环境污染对人才管理的影响**

中国共产党第十九次代表大会报告强调：“加快生态文明体制改革，建设美丽中国”。商会注意到中国已经将保护环境提到了前所未有的高度予以重视。从人力资源管理角度出发，这不仅仅是政治、经济和社会问题，中国的污染控制和生态保护问题同样与人才管理相关。

美世咨询公司发布的《2017年中国人才趋势》显示，中国员工在健康、财富和职业发展的排序中将健康放在第一位。环境污染问题对人民健康水平产生着重大影响，进而影响到企业的人才管理工作。中青在线记者张国发表在2017年1月11日《中国青年报》的文章《泅游中国》中提到，“每个海归都在打量中国的不同侧面。但在一个问题上，他们很容易达成一致：中国以雾霾为代表的污染问题会让有意回国者充满顾虑”。这生动地说明了人力资源管理者在这一问题上所面临的困境。

人才管理的两个关键点为人才吸引和人才保留。吸引外籍高端人才和海外华人华侨及归国留学人员进入中国劳动力市场对解决国内高级管理人才和高级专业技术人才相对短缺的问题至关重要。然而，空气污染仍然是顶尖人才考虑到中国就业的主要关注点。

此外，环境污染问题，特别是以北京、上海为代表的超大城市的空气质量下降也造成了企业进行人才保留的难度。对于已经来到中国工作的外籍高端人才，由于环境污染问题和空气质量对于本人及家属健康的影响而选择离开中国的情形时有发生。同样的，企业经过不断努力培养起来的本土中高端人才也在近几年出现了移民海外的倾向。作为补偿，企业也迫不得已增长薪资补贴进行人才保留，造成了企业面对着额外的财务压力。因此，商会建议政府优先解决北京和上海的空气质量问题，以吸引和留住更多的全球人才。

### **合格人才短缺**

专家们强调了以下领域的人才短缺：自然科学，技术，工程，数学和服务。这些领域对于支持中国的卫生保健、信息技术、环境保护和服务经济发展的进步至关重要。

中国的教育体系需要增加投资，以支持课程体系、教学资源与公司的合作关系。在有充足资金的地区，潜在雇员及其父母可以更好地了解本地和国际公司职业所需的技能。



China Talent Trends 2017 released by Mercer indicates Chinese employees prioritize health over wealth and occupational development. Environmental pollution exerts a significant impact on people's health, which in turn affects the management of talent in enterprises. "Swimming in China," an article published in China Youth News on January 11, 2017 by Zhang Guo stated that "every returned graduate is scrutinizing different sides of China. However, they agree in unison that the pollution problem represented by haze in China will give pause to those who intend to return." It vividly illustrates the difficulties faced by human resource managers on this issue.

The two key points of talent management are attracting talent and then retaining it. Attracting foreign high-end talent and overseas Chinese or returning graduates to the Chinese labor market is critical for solving the shortage of senior professional and technical personnel in the country. However, in both cases, air pollution remains major concern for top talent considering employment in China.

Moreover, environmental pollution, especially poorer air quality in mega cities such as Beijing and Shanghai, also negatively impacts workforce retention. Overseas senior talent already working in China sometimes choose to leave because of health risks caused by environmental pollution and poor air quality. The same trend occurs with local mid-senior talent recruited by companies, who then tend to emigrate overseas. To compensate, enterprises have to offer salary increases and subsidies to retain key talent, which puts additional financial pressure on enterprises. As such, AmCham China recommends that the government prioritize resolving Beijing and Shanghai's air quality issues in particular, in order to attract and retain more global talent.

### *Shortage of Qualified Talent*

Experts have highlighted a shortage of talent in the following areas: natural sciences, technology, engineering, math, and services. These areas are critical for supporting China's health-care, information technology, environmental protection, and advancements in evolution of the services economy.

The Chinese educational system requires increased investment to support curricula, teaching resources and partnerships with companies. In areas where this funding exists, prospective employees and their parents have a better understanding of the skills required for careers within local and international corporations.

Given China's global initiatives, the need for fluency in English and other languages, as well as cross-cultural understanding, has increased. Supplementing classroom instruction with educational exchange programs, internships and company training programs will support skills development in these areas. Individuals with experience in China and other countries are highly sought after by both international and Chinese corporations.

Innovation is critical for business success. One way that companies are diversifying is by actively recruiting women to gain a wider range of perspectives in business decisions. Likewise, with the pending changes in retirement age, corporations will also be able to leverage ideas across generations. In line with this innovation, forward talent planning by companies, creating new employee benefits, and demonstrating career growth will also position enterprises as preferred employers within the industry and support the retention of highly trained staff.

## Recommendations

### *For the Chinese Government:*

- **Explore more innovative approaches to Disability Fund contributions, such as allowing enterprises to use funds from the Disability Fund to support charitable initiatives that will help educate and equip disabled people with employable skills.**
- Conduct labor market analysis (e.g., regarding labor supplies and shortages, comparisons between industries) and provide guidance to enterprises.
- Consult with industry before issuing new laws and regulations and their interpretations, especially those adding to labor costs.
- Establish concrete guidelines for companies to mitigate liability stemming from the health issues caused by pollution.
- Consider prioritizing solutions to Beijing and Shanghai's air quality issues in order to attract and retain more global talent.
- Increase employer flexibility to allow extended retirement, optimize social insurance fund investment, and encourage creative means of investing in commercial insurance or developing long-term savings plans.

鉴于中国的全球举措，流利的英语和其他语言以及跨文化理解的需求增加，教育交流项目、实习和公司培训项目等课堂补充教学将助力所需技能的培养。有在中国和其他国家有工作经验的人才都受到国际和中国公司的青睐。

创新对于企业成功至关重要。企业多元化的一种方式积极招聘女性，以在商业决策中获得更广泛的视角。同样，随着退休年龄的变化尚未决定，企业也能够考虑几代人的想法。根据这一创新举措，企业推进人才规划、创造新的员工福利以及展示职业发展也将使企业成为行业内的首选雇主，并有助于留住训练有素的员工。

## 建议

### 对中国政府：

- 探索更多创新的残疾人就业保障金征收方法，例如允许企业使用保障金的资金来支持慈善倡议，以帮助教育残疾人并使其接受就业技能培训。
- 进行劳动力市场分析（例如，关于劳动力供应和短缺，行业之间的比较）并为企业提供指导。
- 在颁布新的法律法规，特别是有关劳动力成本的内容及其解释之前，向相关行业进行咨询。
- 为公司制定具体的指导方针，减轻由污染引起的健康问题所造成的问责。
- 考虑优先解决北京和上海的空气质量问题，以吸引和留住更多的全球人才。
- 提高雇主的灵活性，允许延长退休年龄，优化社会保险基金投资，鼓励创造性投资商业保险或制定长期储蓄计划。

# Intellectual Property Rights

## Introduction

**A**mCham China members continued to face intellectual property (IP) challenges in 2017, including issues related to trade secrets, patents, copyrights, rewards and remuneration for service inventions, and trademarks. Strong IP protection is vital for foreign companies with investments in China, and improvements in this field would help both US exports and jobs. As many Chinese companies start to move up the value chain, issues such as an inability to patent, bad faith trademarks, and overall weak enforcement are increasingly important for Chinese as well as foreign companies. Strong IP protection is critical for fostering the type of innovation that can make Chinese companies globally competitive. Although IP challenges receive considerable attention from Chinese authorities, significant issues that continue to challenge both foreign and domestic companies operating in China, as outlined in this chapter.

## Ongoing Regulatory Issues and Recent Developments

### Trade Secrets

Trade secrets remain one of the most vulnerable forms of IP in China. This is partly the result of the Chinese government authorities jeopardizing the value of trade secrets by demanding unnecessary disclosure of confidential information for product approvals. Compromising trade secrets reduces economic value, undermines trust, and threatens even long-standing business relationships. Over time, inadequate protection for trade secrets hampers cross-border technology transfers, dampens investment in research and development (R&D), and hinders the development of an innovation-driven economy in China. More pertinent, however, is the fact effective trade secrets protection is much cheaper than patent prosecution. This is a potentially crucial cost differential and advantage, especially for small and medium-sized enterprises (SMEs).

Trade secrets protection currently depends on a combination of laws and regulations, including the recently revised Anti-Unfair Competition Law (AUCL) and the Criminal Law. Both

laws fail to address current commercial realities, especially innovative methods for trade secrets misappropriation. A typical trade secrets owner attempting to enjoin disclosure of stolen information or recover adequate damages faces a disproportionately low success rate in the People's Courts, and even less favorable results for criminal violations. Onerous burdens of proof and constrained powers of investigation pose significant obstacles to effective enforcement.

The revised AUCL, effective as of January 1, 2018, includes some welcome improvements in the protection of trade secrets, including an updated definition of "trade secrets" (these no longer require "industrial applicability"), and increased administrative fines (up to RMB 3 million). The new AUCL also broadens the scope of an infringer's illegal benefits resulting from the misappropriation of a trade secret, which can then serve as the basis for calculation of damages. The revised AUCL gives local Administrations for Industry and Commerce (AIC) additional powers for collecting evidence that will be helpful for administrative enforcement. However, the new law does not ease the burden on an owner of a trade secret to present a prima facie case of infringement that would be sufficient for acceptance by a local AIC.

Notwithstanding the above improvements and other positive developments, AmCham China remains concerned about several areas in which shortcomings remain unaddressed. For example, the AUCL still focuses on the actions of "operators," potentially limiting enforcement action against misappropriation of trade secrets by individuals. Members were also disappointed that the final version of the amended AUCL omitted a draft provision that would have shifted the burden of producing evidence in certain circumstances.

AmCham China looks forward to further positive developments, preferably a separate trade secrets law in correspondence with laws governing other IP rights. As proposed in the 2016 White Paper, AmCham China also strongly encourages the People's courts to establish written guidelines on the protection of trade secrets in civil and criminal litigation. More detailed guidelines are particularly needed to address the following: ❶ the specific factors for a court to consider when granting or denying an evidence preservation order against the premises of an accused infringer; ❷ the prima facie evidence required for a complainant to prove the "unknown to the public" element of a trade secret;

# 知识产权

## 引言

**中** 国美国商会（商会）的会员企业在 2017 年依旧面临知识产权方面的挑战，其中涉及商业秘密、专利、著作权、职务发明奖励、报酬，以及商标等领域。有力的知识产权保护对在华投资的外资企业至关重要，这方面的改进有助于推动美国出口和就业。随着很多中国企业开始向价值链上端转移，无法获得专利授权、恶意商标注册以及总体执法不力等问题对中国企业和外国企业也有着越来越显著的影响。有力的知识产权保护是促进中国企业开展创新活动，进而保持国际竞争力的关键所在。虽然中国有关部门一直很关注知识产权，但是在华运营的内外资企业依旧面临很多共同的挑战。本章将对此作详细说明。

## 现存监管问题和最新进展

### 商业秘密

商业秘密仍然是中国最为脆弱的知识产权形式之一，部分原因是中国政府的一些部门在进行产品审批时要求披露保密信息，包括一些并无披露必要的信息，从而损害了商业秘密的价值。商业秘密的不当披露，会降低产品经济价值、破坏信任甚至危及长期的商业合作关系。商业秘密保护不力的问题如果长期得不到解决，可能妨碍跨境技术转让、抑制研发方面的投资，并且阻碍中国发展创新驱动型经济。另外，有效保护商业秘密所付出的成本比进行专利诉讼要低得多，这是一种潜在的重要成本差异和优势，尤其对中小企业 (SME) 而言。

有关商业秘密保护的现行法律规则散见于多部法律法规，包括《反不正当竞争法》和《刑法》。这两部法律已经不能充分反映当代商业实践的情况，特别是商业秘密滥用的各种创新方法。如果商业秘密所有人试图通过诉诸人民法院来禁止窃取者披露商业秘密或寻求充足的损害赔偿，

胜诉的几率通常很低，而商业秘密案件构成刑事犯罪的门槛则更是高不可攀。繁重的举证责任以及受到限制的取证权力对有效执法构成了重大阻碍。

修订版《反不正当竞争法》于 2018 年 1 月开始执行，完善了一些关于商业秘密保护的条款，包括对“商业秘密”的重新定义（不再需要“工业应用”），并加大了行政处罚力度（最高高达 300 万元）。修订版《反不正当竞争法》还扩大了侵权人盗用商业秘密的侵权范围，以此可作为罚款依据。修订版《反不正当竞争法》赋予当地工商管理部门额外的取证权利，有助于行政执行。然而，新法律并未减轻商业秘密所有人在向当地工商管理部门上报可受理的初步举证的侵权案件时候的负担。

尽管有上述及其它改进，商会仍关注若干亟待解决的问题。例如，《反不正当竞争法》仍将侧重于“经营者”的行为，从而可能限制针对盗用商业机密的执法行动。另人沮丧的是，修订版《反不正当竞争法》取消了一些条款草案，而它们将在某些情况下转移举证责任的负担。

商会期待未来更多的积极进展，最好能专门制定一部商业秘密法与其他知识产权法相呼应。正如商会在 2016 年《白皮书》中的提议，商会仍然强烈建议中国法院颁布书面指南，确保商业秘密能够通过民事和刑事诉讼得到保护。具体需要解决以下问题：① 法院在授权或拒绝对被控侵权人的房产证据保留的相关问题；② 原告证明商业秘密相关的“非公开”内容所需要的初步举证证据；③ 对于商业秘密为原告所有但技术为被告使用等类似情况，需要制定证明侵权的法律标准。

### 专利

#### 立法进展

2012 年 8 月，国家知识产权局公布了《专利法》第四次修订草案。该草案旨在加强专利的行政保护和执法工作，如增加了主动执法权、没收侵权产品和生产工具、以及判

and ③ the legal standard for finding infringement in cases where the trade secrets owned by a complainant and the technology used by the defendant are similar but not identical.

## Patents

### Legislative Developments

The State Intellectual Property Office (SIPO) released a draft of the fourth amendment to the Patent Law in August 2012. The draft outlines increased administrative protection and enforcement of patents, and includes the addition of proactive enforcement powers and new penalties, such as fines and the confiscation of infringing products and manufacturing equipment. AmCham China continues to have strong concerns about this trend to expand administrative authority at the expense of judicial authority. Unlike other branches of IP, patent disputes are inherently and necessarily technical, complex, and time-consuming if they are to ensure an effective resolution. As such, stronger judicial protection is the better approach, as administrative action may intervene in the resolution of private disputes and render the process more complicated and protracted, potentially leading to further disputes.

Moreover, administrative authorities may lack the expertise and resources to handle the consequent increase in workload. Such cases can overwhelm administrative capacity, delaying the resolution of disputes or leading to abuses of the administrative process. AmCham China notes that certain Chinese studies refer to foreign models, such as the US International Trade Commission, to justify the administrative protection of patents. However, these examples are not inherently applicable to China as these agencies exercise jurisdiction only in very special and limited cases, rather than to patent disputes in general. They are also quasi-judicial in their exercise of jurisdiction and bound to strict procedures.

On April 1, 2015, SIPO released the draft “Amendments to the Patent Law” for public comment. The draft included substantial revisions to 30 articles and added a new chapter on patent applications. Major changes included the following:

- Expansion of administrative powers regarding investigation of patent infringement, issuance of injunctions, and levying of fines.
- Introduction of “punitive damages” and doubling or tripling the compensation amount for the purpose of “punishing,” rather than simply “compensating,” in cases of willful infringement.
- Strengthening the legal system for patent attorneys and patent agencies and imposing strict regulations on unlicensed patent attorneys/agencies.

Following this, on December 2, 2015 the SCLAO released a revised draft “Amendments to the Patent Law (Draft for Review)” for public comment. Key amendments included greater patent protection through increased punishment for

infringement, the promotion of exploitation and application of patents to realize their value, and improvements to the patent review system, as well as to the legal systems related to patent agents.

Since 2016, the State Council and the China Food and Drug Administrative (“CFDA”) have issued several documents indicating that the government is considering a more sophisticated patent linkage system. Although AmCham China agrees that the interests of innovator patent owners, generic manufacturers, and patients must be balanced, many AmCham China members are concerned that recent legislative and judicial developments are indicative of a general attitude that is unfavorable to innovator patent owners. One example is the “Relevant Policies for Encouraging Innovation of Drugs and Medical Devices and Protecting the Rights and Interests of Innovators” (draft for public comment) published by the CFDA on May 12, 2017, which is intended to outline the basic framework of China’s future patent linkage system. This draft policy requires the patent owner to file a civil action within 20 days after obtaining a notice from a generic manufacturer, if the owner believes that the generic drug infringes his or her patent. This 20-day time limit is too short to prepare a reasonable civil action, particularly in the case of pharmaceutical patents. AmCham China recommends that a more comprehensive and broader platform be set up to accommodate all relevant stakeholders, including the CFDA (and its superior National Health and Family Planning Commission), SIPO, the National Development and Reform Commission, the Supreme People’s Court, major innovator patent owners, representative generic manufacturers, and medical services representatives, in order to develop a balanced legal framework that takes the interests of all relevant parties into account in order to foster innovation and maximize the benefits for patients in the long term.

### Judicial Developments

The Supreme People’s Court published a revised judicial interpretation on patent infringement litigation, effective April 1, 2016. The revised interpretation provides additional information on how People’s courts decide patent infringement cases. AmCham China welcomes this development. Specialized IP courts, operating since 2014, have likewise provided further guidance on how patent infringement cases may be handled.

The new judicial provisions include the use of rebuttable presumptions to establish the amount of infringement damages, as well as the use of evidence preservation orders to obtain the financial records of defendants. These provisions are a positive step for fostering transparent and effective patent enforcement in China. From reported cases, more local courts have applied these new evidence rules, which have resulted in increased damages awards. AmCham China welcomes the trend in which more local courts are willing to grant so-called “discretionary damages” above the upper limit of statutory damages, as well as the overall tendency

处罚金等新的救济措施。商会对这一行政权力扩大的趋势深感担忧。与其他类型的知识产权不同，专利争议本质上必然会涉及复杂的技术问题，其有效解决必然会耗费大量时间。行政执法程序有可能干预私人纠纷的解决，导致争议解决过程更为复杂、周期更长，甚至导致进一步的争议，因此，更强有力的司法保护才是更好的办法。

另外，行政主管部门缺少应对激增的工作量所需的专业知识和资源，可能由此导致行政执法负担过重，造成争议解决的迟延或行政程序被滥用。商会注意到，一些中国研究报告引用了外国实践（如美国国际贸易委员会）作为专利行政保护的参考。然而，这些制度在本质上并不适用于中国，因为此类外国机构仅针对非常特别且有限的案件行使管辖权，而不适用于一般性的专利争议。在行使其管辖权时，这类外国机构是准司法性的，且必须遵守严格的程序。

2015年4月1日，国家知识产权局发布了《中华人民共和国专利法（征求意见稿）》，向社会公开征求意见。该草案对30条款进行了实质性修订，增加了关于专利申请的新章节。主要的更改包括：

- 增大调查专利侵权、发布禁令和征收罚款的行政权力；
- 引入“惩罚性赔偿”，将故意侵权的赔偿金额提高至两倍或三倍，即以“惩罚”为目的，而不只是“补偿”；
- 强化与专利律师、专利代理机构有关的法律制度，并对未经授权的专利律师、代理机构实施严格监管。

2015年12月2日，国务院法制办公室发布了《专利法修订草案（送审稿）》，向社会公开征求意见。主要修订内容包括：加强对侵权行为的处罚、促进专利的运用以实现其价值、改进专利审查制度和专利代理人制度等。

自2016年以来，国务院和国家食品药品监督管理局颁布多项文件，表明政府正在考虑建立一个更为复杂的专利相关体系。尽管商会认同必须平衡创新专利所有者、非专利药制造商和患者之间的利益，近期立法和司法的进展都对创新专利所有者不利，许多商会成员都对此表示担忧。比如，2017年5月12日，国家食品药品监督管理局颁布“鼓励药品和医疗设备创新和保护创新者权益的相关政策”（公开征求意见稿），旨在对中国未来专利相关体系的基本框架进行规划。该政策草案要求那些认为非专利药品违法其专利的专利所有者，在收到非专利药制造商的通知后20天内提起民事诉讼。20天的期限太短，无法准备有力的民事诉讼，尤其关于药品专利方面。商会建议建立一个更全面

的平台，以适用于所有利益相关者，包括国家食品药品监督管理局（及其上级单位国家卫生和计划生育委员会）、国家知识产权局、国家发改委、最高人民法院、主要创新专利所有者、非专利药品制造商代表，以及医疗服务代表，从而建立一个适用于多方成员的法律框架，以加强创新并最大化患者的长期利益。

## 司法进展

最高人民法院公布了修订后的侵犯专利权纠纷司法解释，自2016年4月1日起实行。这为中国法院审理侵犯专利权纠纷案件提供了更为清晰的指导。2014年专门设立的知识产权法院也为专利侵权案件的审理提供了进一步指导。

这些新的司法性规定包括：利用可反驳的推定去定夺损害赔偿金额、使用证据保全令获得被告人的财务记录。这些规定都是可喜的进展，有助于提高中国专利执法的透明度和有效性。从判决的案件来看，更多的地方法院采用了这些新的举证法规，从而提高了赔偿金额。商会欢迎更多的地方法院提高所谓“酌情赔偿”，使其超越法定赔偿上限，以及人民法院提高赔偿金额的举措。商会期待这些程序能够得到平衡、一致的适用。

中国法院已经采取公布判决等方式努力提高透明度，并通过指导性案例制度提高可预测性、加强法治。商会认为这是中国知识产权司法保护的重要里程碑。但是，考虑到这一重大改革是在民法法系下发起的创举，商会会员对其中某些问题有所担忧，如指导案例的选择方式、被援引为在先判例的案件的效力位阶等。

继之前发布要求在网上公布法院判决的指令之后，最高人民法院又发布《关于人民法院在互联网公布裁判文书的规定》，自2016年10月1日起施行，要求所有发生法律效力裁判文书，应当在裁判文书生效之日起七个工作日内在互联网公布。但是，很多法院还没有遵守这一规定。公布法院判决对加强法治和提高知识产权保护至关重要。因此，商会促请更加严格地执行最高人民法院的命令，及时公布案件裁决。

在中国越来越难保护专利，中国的外国制药业对此表示强烈担忧。尤其是当竞争者是中国公司的时候。专利所有者常常发现，对专利发明和充分披露的标准过于严格。

北京知识产权法院判决了首起专利侵权案件，涉及保护图形用户界面的设计专利，这是知识产权保护的进一步发展。如果硬件产品是主题设计的重要组成部分，这将大

shown in the People's Courts to increase the level of damages. Our members look forward to the continuing application of these procedures in a balanced and consistent manner.

People's courts have continued to increase transparency through the publication of their decisions, which increases predictability of outcomes and strengthens the rule of law through the Guiding Cases System. AmCham China considers this a major milestone in the evolution of judicial IP protection in China. However, as this major reform is taking place in a civil law system, our members have concerns about some aspects of the initiative, such as the grounds on which guiding cases are selected and their relative legal authority when referenced as precedents.

Following the earlier directive requiring the online publication of court decisions, the Supreme People's Court issued the "Provisions of the Supreme People's Court on Publication of Judgment Documents by the People's Courts on the Internet," effective October 1, 2016. The provisions require that all decisions be published online within seven working days after they take effect. However, many courts have yet to comply with the publication requirement. Publication of court decisions is essential for strengthening the rule of law and enhancing IP protection. AmCham China urges more rigorous implementation of the Supreme People's Court's directives regarding the timely publication of cases.

The foreign pharmaceutical industry in China has strong concerns that it has become increasingly difficult to defend their patents in China. This is especially the case when the challenger is a Chinese company. Patent owners often have the impression that undue strict standards are imposed on the relevant patent's inventiveness or disclosure sufficiency.

A further development is the first infringement judgment issued by the Beijing Intellectual Property Court involving a design patent protecting a graphic user interface (GUI). The finding that the hardware product is an essential part of the subject design would significantly diminish the enforceability of such GUI patents, as SIPO still requires that a hardware product on which the GUI is used be shown in solid lines in images of the design patent. Although the latest draft amendments to the Patent Law may partially alleviate this unnecessary restriction on GUI patents, AmCham China strongly recommends that a more definitive solution be implemented by giving "product" in the definition of "design patents" a broader scope that also covers "screen displays and icons", in line with the current version of the Locarno Classification and international norms. Such development should also be welcome to Chinese companies as they have become very active in filing such patents.

### *Administrative Developments*

On October 27, 2016, SIPO published the draft "Revisions to the Patent Examination Guidelines" (Revisions) for public comment. The Revisions provide for post-filing data

supplementation (particularly useful for pharmaceutical inventions) and implement other relevant changes, thereby bringing SIPO's examination procedures more closely in line with international norms such as those followed by the US Patent and Trademark Office and the European Patent Office. The Revisions also appear to ease restrictions on securing patents for business methods and software. AmCham China submitted comments on the Revisions in which we welcomed most of these changes. However, we also expressed concerns that the new business method patent rules be consistent with the "new technical solution" requirement in the Patent Law, lest patent quality suffer. On March 1, 2017, a final version of the Revisions was issued by SIPO and entered into effect April 1, 2017, with few changes from the draft Revisions.

AmCham China understands that despite the new rules officially allowing both patent applicants or owners to submit supplemental data during examination and permitting post-grant invalidation actions, applicants and owners still face difficulties in having such data admitted in actual cases, due to an overly strict application of the new rules. This has resulted in the unmerited rejection and invalidation of patent applications or patents for very high-quality innovations. A latest case in this area is the invalidation by the Patent Review Board (PRB) of patent No. 201110029600.7, in which the PRB refused to admit the supplemental data submitted by the patent owner on the grounds that the language in the specification about the "technical effect" to be proven by the data in the specification, is by nature "conclusory assertion" unsupported by data. Such logic by the PRB places the patent owner in a dilemma.

Another concern about the SIPO's patent examination practice is the overly broad description of a distinguishing feature being "readily perceivable" by examiners in their inventiveness analysis of the application under examination and the cited prior art. AmCham China recommends that SIPO emphasize that it is the examiner's responsibility to cite specific evidence to prove, or give sufficiently detailed reasoning, why a distinguishing feature is readily perceivable from the prior art. AmCham China also recommends that SIPO and its PRB work with the Beijing Intellectual Property Court, Beijing Higher People's Court and Supreme People's Court to build a precedent system and provide more detailed rules to guide SIPO examiners' practice in inventiveness and improve the current overly broad rules in SIPO's Patent Examination Guidelines.

Our members continue to be concerned about the quality of patents, especially utility model patents (UMPs). AmCham China applauds SIPO's recent measures and plans to eliminate the fiscal incentives that induce a flood of UMP applications and grants, many of which are solely motivated by a desire to take advantage of monetary subsidies. However, further measures are still needed to enhance patent quality. For example, the Patent Law could be amended to set a

大阻碍类似图形用户界面专利的可实施性，因为国家知识产权局仍要求图形用户界面的硬件产品的使用与设计专利的图像直接相关。尽管最近专利法的新草案修订可以一定程度上减少图形用户界面的不必要限制，商会仍强烈建议采取更明确的解决方案，将“产品”定义为范围更广的“设计专利”，纳入“屏幕显示和图标”，以符合当前的外观设计分类和国际规范。这种发展也应受到中国公司的欢迎，因为他们在申请专利方面十分积极。

### 行政进展

2016年10月27日，国家知识产权局发布了《专利审查指南修改草案（征求意见稿）》，允许补交材料（这对药品发明尤其有用）并且做了其他一些修改。国家知识产权局的审查程序变得更贴近国际规范，如美国专利商标局和欧洲专利局程序。修改草案似乎还放宽了取得商业方法和软件专利的限制。商会针对修改草案提交了意见，商会对其大部分修改表示欢迎，但是对商业方法专利的新规定表示关注，建议该规则的适用应符合《专利法》中对“新的技术方案”的要求，以避免对专利质量造成不利影响。2017年3月1日，国家知识产权局发布修改后的《专利审查指南》，该指南自2017年4月1日起施行，与审查草案相比略有改动。

商会了解到，尽管新规定正式允许专利申请人或所有者在审查期内提交补充材料，以及专利核准后无效行动，但是由于新规定过于严格的实施，申请人和所有者仍难以补充实际情况下被认可的材料。这导致了专利申请或高质量创新专利的申请被拒和无效。最近相关案件就是专利审查局拒绝了编号为201110029600.7的专利申请，该局以支持“技术效果”说明的数据本质上是不支持的“总结性声明”为理由，否决了专利所有者提交的补充材料。专利审查局的这种处理方式使专利所有人进退两难。

国家知识产权局专利审查工作还有一个令人担忧的地方，那就是审查官在其采用之前技术对申请进行自主分析的时候，对“已感知”明显特征过于宽泛的描述。商会建议国家知识产权局强调，采用具体证据证明或提供详细推理关于为何显著特征与先前技术有所不同应为审查官自己的责任。商会还建议国家知识产权局以及其专利审查局，与北京知识产权法院、北京高级人民法院和最高人民法院合作，建立一个体系并提供更详细的规则来指导国家知识产权局审查官的审查工作，完善当前国家知识产权局《专利审查指南》过于宽泛的规定。

此外，专利的质量仍然让人担忧，特别是实用新型专利的质量。商会对国家知识产权局最近取消财政激励的措施和计划表示赞赏。财政激励导致出现了大量不当的实用新型专利的申请和授权，其中许多申请动机仅仅是为了获得财政补贴。此外，政府可以采取其他方式提高专利质量。例如，《专利法》的修订案可以对实用新型专利的创造性设置更高的标准要求；限制对实用新型专利的救济（尤其是禁令性救济和侵权赔偿）；在实用新型专利的专利权人启动侵权诉讼程序时要求对该实用新型专利进行审查和评估；并且限制实用新型专利的可转让性。要激励真正的创新并做到对法律主体的公平对待，需要建立适当的制度和机制。

另外，国务院2015年12月发布的《关于新形势下加快知识产权强国建设的若干意见》将提升专利质量作为主要任务之一。国家知识产权局宣布将实施专利质量提升工程，提高专利创造、应用、审查和利用质量。

### 著作权

让商会感到失望的是，2017年中国在著作权立法方面并未取得实质性进展。商会2015年、2016年和2017年《白皮书》中提到的许多问题依然存在，尤其是法定损害赔偿的限制、畸高的证据门槛、广泛存在的企业最终用户软件盗版、中国当局拒绝起诉预装未授权软件的违法行为等。商会继续促请中国政府修订《著作权法》和《刑法》，从而有效震慑软件盗版行为。

### 《著作权法》的修订

商会希望中国对《著作权法》做进一步的修订。为修订《著作权法》，国家版权局召集了多轮讨论，公开征求意见，发挥了领导作用，商会对此表示赞赏，并希望未来能有更多这样的机会。商会之前针对《著作权法》提出的建议依然适用，并特此提出以下几点：

在最新的修订草案中，就执法问题提出的提高法定损害赔偿金额和举证责任转移等修订意见已经得到了采纳。这些增补内容应该保留在《著作权法》最终版本中。商会强烈促请国务院法制办和全国人民代表大会（全国人大）加快对《著作权法》的修订。商会希望与这两大机构进行持续对话。

商会促请国务院法制办在《著作权法》中明确规定未经授权软件的商用行为属于侵犯复制权行为。这对打击企业用户使用未经授权的软件、支持企业发展云计算等具有



higher bar for the inventiveness of UMPs, limit the remedies for UMPs (particularly injunctive relief and damages), stipulate examination and assessment upon the UMP patentees' initiation of infringement proceedings, and limit the assignability of UMPs. Proper institutions and mechanism are required to stimulate true innovation and ensure the provision of fair treatment.

The "Several Opinions of the State Council on Building a Powerful Intellectual Property Nation Under New Conditions," issued in December 2015, designated patent quality as a major task. SIPO announced a patent quality promotion program to enhance the quality of patent creation, application, examination, and utilization.

### *Copyright*

AmCham China was disappointed to see no significant legislative developments on copyright in 2017. As such, many of the issues raised in the 2015, 2016 and 2017 White Papers persist, particularly those related to the capping of statutory damages, unreasonably high evidentiary thresholds, widespread enterprise end-user software piracy, and the refusal by Chinese authorities to prosecute pre-installed unlicensed software violations. We continue to urge that both the Copyright Law and the Criminal Law be revised to provide effective deterrence against software piracy.

#### *Amendment of the Copyright Law*

AmCham China looks forward to further amendment of the Copyright Law. We applaud the leadership of the NCA for hosting previous sessions for discussion and public feedback on Copyright Law amendments, and look forward to further opportunities in the future. AmCham China's prior recommendations for the Copyright Law remain relevant, but the following are noted in particular:

- The increased statutory damages and a reallocated burden of proof, in addition to other proposed changes regarding enforcement, have been adopted in the most recently amended draft and should be preserved in the final version of the law. AmCham China strongly urges the SCLAO and NPC to expedite the update of the Copyright Law and welcome continuing dialogue with both authorities.
- We urge the SCLAO to revise the Copyright Law to clarify that commercial use of unlicensed software is an infringement of reproduction rights, and is critical for deterring unlicensed software use by enterprises and fostering the development of cloud computing. In the context of subscription and cloud computing, temporary reproductions play a very important role, so failure of the Copyright Law to provide protection for cloud computing may hamper development of the software industry in the cloud era.

### *Trademarks*

#### *Online Counterfeiting*

In 2017, the central government made notable efforts towards addressing the longstanding issue of online counterfeiting. These recent measures have been aimed at clarifying the duty of care for e-commerce platforms, as well as increasing the transparency of take-down processes for e-commerce platforms that host links to infringing goods.

On November 7, 2017, the NPC issued the second draft of the E-Commerce Law for public comment. The second draft appears to have taken account of the overwhelmingly negative feedback on a provision in an earlier draft allowing e-commerce platforms to repost infringing links upon merely receipt of a written denial of infringement by the seller. Article 37 of the 2017 draft provides that a statement from a seller must "specify preliminary evidence" to support a claim of non-infringement. The 2017 draft does not, however, provide any guidance regarding the type of "preliminary evidence" that would be sufficient to discharge the seller's burden of proof under the circumstances. Article 39 of the draft introduces a constructive standard regarding the degree of awareness of an infringement and subsequent liability of e-commerce platforms ("known or should have known that an operator on the platform has infringed an intellectual property right"). However, this standard would have no practical effect if platforms can avoid an enforcement obligation by showing partial, weak, or fake evidence of non-infringement by a seller. AmCham China believes that this latest draft is a positive development but does not adequately clarify the obligations of e-commerce platforms or streamline the notification and take-down process for brand owners.

On November 14, 2017, the SAIC circulated a draft document entitled Interim Measures for the Punishment of Illegal and Dishonest Acts in Internet Transactions. This draft document introduces a "blacklist" for traders who have faced punishment for selling infringing goods on an internet platform. A first-time infringer is to be placed on an "alert" list, while any sellers who are punished by any AIC twice in a five-year period are to be placed on a blacklist for three years. Blacklisted sellers are to be prohibited from selling goods on e-commerce platforms. E-commerce platforms will also be required to post a list of blacklisted infringers, which AmCham China supports.

AmCham China has also observed several cases involving the sale of infringing goods via third-party platforms. One such case is *Discovery Communications, LLC v. Zhongshan Tansuo Outdoor Gear Co., Ltd. et al.*, decided by the Beijing IP Court on July 20, 2017. This case involved the egregious sale of infringing goods through an "official flagship store" on the JD.com e-commerce platform. The Beijing IP Court held that JD.com had a duty to make proactive efforts to check and understand the status of alleged trademark rights

重要意义。在订阅和云计算领域，临时复制发挥着重要作用。若《著作权法》不重视为云计算提供法律保护，必将严重阻碍未来软件行业在云计算领域的发展。

## 商标

### 在线售假

2017年，中央政府继续处理长期存在的在线售假问题。最近的这些措施旨在明确电子商务平台的义务，以及提高了对违规电子商务平台的下架流程的透明度。

2017年11月7日，全国人大发布《电子商务法》的第二版草案，向社会公开征求意见。对于早期草案中允许电子商务平台在仅收到卖家书面侵权否认之后就恢复侵权链接的条款，人们对此一致表示反对，第二版草案似乎考虑到了这一点。2017年草案的第37条规定，卖家必须提供“详细的初步证据”来证明没有侵权。但是，2017年草案没有提供任何关于“初步证据”类型的指导，以解除各种情况下卖家的举证负担。草案第39条介绍了一项建设性的标准，涉及侵权意识程度和电子商务平台随后责任（已知或应当已知平台运营商已经违反知识产权）。然而，如果卖家可以通过提交片面、说服力弱或假的证据来证明没有侵权，平台就因此而规避执行责任，这项标准将变得毫无实际效用可言。因此，商会认为最新草案有所完善，但是并未充分阐述电子商务平台的责任，也没有简化商标所有者的通知和下架流程。

2017年11月14日，中国工商总局分发了《关于违法和不实网络交易行为惩罚的临时措施》文件草案。该文件草案纳入了卖家“黑名单”，即在互联网平台出售侵权商品且面临惩罚的人。初犯侵犯者将被警告，而任何五年之内被工商管理部门处罚两次的卖家，将被列入黑名单三年。黑名单卖家禁止在电子商务平台出售商品。电子商务平台也应公布黑名单侵权者，商会对此表示支持。

商会也发现了一些通过第三方平台出售侵权产品的案件。比如2017年7月20日，由北京知识产权法院所判决的探索通信公司和中山探索户外装备有限公司案件。这起案件涉及在京东电子商务平台上通过“官方旗舰店”出售侵权产品。北京知识产权法院认为，京东有责任在“官方旗舰店”申请过程中积极地审核和了解所谓商标权的情况。在这起案件中，申请者提交的待审核商标申请不足以解除京东的责任，法院裁决京东应当意识到商标不符合注册标准的风险。这起案件似乎对电子商务平台提出了更高责任

要求，但是可以说这仅限于名牌商品的特殊“旗舰店”。商会认为，这些类似裁决表明了人民法院正在努力解决关于侵权卖家电子商务平台责任的一些歧义问题。

尽管上述问题已有进展，但是在线售假问题仍十分严重。比如，累犯可以轻易使用不同身份来避免被发现。正如2015年和2016年的情况，最近进展一般只受益相对知名的品牌，这些品牌可以投入大量资源来定期监控电子商务网站，并主动要求这些网站下架侵权产品的链接。

在线售假仍然是一个长期存在的问题，如果没有政府的极大重视和产业的参与，这个问题将难以得到妥当解决。因此，商会促请中国政府继续解决这项重要且紧迫的问题，尤其是可以采取以下措施：

- 继续向电子商务平台施加压力，严格、透明和用户友好地执行关于通知、下架流程以及累犯的政策（最好采用2个或3个下架规则）。
- 鼓励电子商务平台采取最佳实践，使之更易识别造假者，且无需初步授权证据就可删除卖家发布的链接，使具备多项虚假身份的造假者更难运营。
- 鼓励电子商务平台创建知识产权保护文化，积极采取措施让造假者难以在其网站上发布产品（比如建立一个随机的知识产权授权审核体系，并纳入大量厂商）。

### 异议

2014年5月1日生效实施的新修订的《中华人民共和国商标法》（《商标法》）未就争议商标在国家工商总局商标局注册登记后的上诉程序作出规定。在现行的异议程序下，如果异议方在商标局败诉，存在异议的商标将被注册。如果败诉方对商标局的决定不满意，它必须向商标评审委员会提出申请，要求宣告该商标无效。

正如商会在2015、2016、2017年《白皮书》中所述，商会会员企业仍然担心现行异议程序会使恶意抢注商标的第三方申请人获得优势，除非商标局进行异议审查的能力得到显著提升。商会会员企业依旧认为商标局的决议水平并没有提高，尤其涉及到恶意抢注商标时。然而，2017年出现了一些令人鼓舞的迹象，表明未来可能发生变化。在最新进展中，商会尤其受到鼓舞，其中包括：① 对涉及恶意抢注的案件进行集体审查；② 加速或优先审查涉及恶意抢注的案件；③ 努力使商标局审查标准与商标评审委员会和人民法院的标准一致。

in an application for an “official flagship store.” In this case, the review of pending trademark applications provided by the applicant was not sufficient to protect JD.com from liability, with the court ruling that JD.com should have been aware of the risk that the trademarks might not obtain registration. While this case appears to present a higher duty of care for e-commerce platforms, it is arguably limited to those that host special “flagship stores” for famous branded goods. AmCham China believes that rulings such as these demonstrate that the People’s Courts are now making commendable efforts to address some of the ambiguities regarding the obligations of e-commerce platforms that host infringing sellers.

Despite the developments discussed above, the problem of online counterfeiting remains acute. For example, repeat offenders can easily use different identities to avoid detection. As was the situation in 2015 and 2016, the benefits from recent improvements are generally only relevant to owners of relatively well-known brands who can invest significant resources to monitor e-commerce sites regularly and proactively petition those sites to take down links to infringing products.

Online counterfeiting remains a long-standing problem that is unlikely to improve without significant government attention and engagement with industry. As such, AmCham China urges the Chinese government to continue to address this important and pressing issue by adopting the following measures in particular:

- Continue to apply pressure on e-commerce platforms to implement strict, transparent, and user-friendly policies regarding notice-and-take down processes and repeat offenders (preferably adopting simple two or three-strike rules).
- Encourage e-commerce platforms to adopt best practices to make it easier to identify counterfeiters and to remove links posted by sellers without prima facie evidence of authorization, and to make it more difficult for counterfeiters to operate under multiple false identities.
- Encourage e-commerce platforms to cultivate a culture of IP protection and take proactive measures to make it more difficult for counterfeiters to list products on their sites (e.g., instituting a system of random IP authorization audits of high-volume vendors).

### Oppositions

Under the amended Trademark Law, which became effective on May 1, 2014, there is no right of appeal within the Trademark Office (TMO) if an opposed trademark is allowed registration. According to the current opposition procedure, an opposed mark will become registered if an opponent loses before the TMO. If the losing party is dissatisfied with the ruling, it must file for review by the Trademark Review and Adjudication Board (TRAB) to invalidate the trademark.

As stated in the 2015, 2016 and 2017 White Papers, AmCham China members remain concerned that current opposition procedures will continue to favor the applicants of third-party trademarks filed in bad faith, unless the quality of the TMO’s examination of oppositions is improved. AmCham China members continue to report that the quality of TMO decisions has not significantly improved, particularly in issues related to the filing of identical trademarks in bad faith. However, there were some encouraging signs in 2017 suggesting the possibility of future changes. AmCham China is particularly encouraged by a few recent developments, including:

- the collective review of cases involving the same offender of filing in bad faith;
- expediting or prioritizing the review of cases involving bad faith; and
- efforts to align TMO review standards with those of the TRAB and the People’s Courts.

AmCham China strongly recommends that the SAIC continue its efforts to improve the procedures for handling oppositions in the TMO. We recommend that the Chinese government further strengthen the tools available to SMEs that are less well-known in the PRC market to effectively challenge pirate filings of their trademarks by third parties and a deeper alignment of review standards among the TMO, TRAB and the People’s Courts.

### Recent Updates

Several noteworthy trademark-related legislative, administrative, and judicial developments in 2017 include the following:

- Promulgation of the Anti-Unfair Competition Law (November 2017), which came into effect on January 1, 2018.
- Publication of the “Regulations on Several Issues Concerning the Trial of Administrative Cases Involving the Authorization and Determination of Trademark Rights,” effective as of March 1, 2017.
- Publication of the “10 Big Intellectual Property Cases” and “50 Model Intellectual Property Cases” by the Supreme People’s Court (April 2017).
- Publication of Model Cases by various higher courts and IP courts (April 2017).
- Publication of Model Cases of “Bad-faith” filings by Beijing IP Court (April 2017).
- Publication of Trademark Examination and Review Standards for the TMO and TRAB (January 2017);
- Issuance by the SAIC of the “Opinions on Furthering the Reform to Facilitate Trademark Registration Procedures and Improving Trademark Registration Efficiency” (December 2017).

商会强烈建议国家工商管理总局改善商标局异议申请处理程序。我们建议中国政府进一步增加在中国市场内没有名气的中小企业可以使用的工具，以有效应对第三方对其商标的恶意抢注以及使商标局审查标准与商标评审委员会和人民法院的标准一致。

### 最新进展

2017年，一些值得关注的商标相关立法、行政和司法进展包括：

- 颁布《反不正当竞争法》(2017年11月)，自2018年1月1日起施行。
- 2017年3月1日起，《关于审理涉及商标权授权和认定的行政案件若干问题的规定》的出版。
- 最高人民法院发布中国法院10大知识产权案件和50件典型知识产权案例(2017年4月)。
- 各高等法院和知识产权法院(2017年4月)发布典型案例。
- 北京知识产权法院(北京知识产权法院,2017年4月)发布典型恶意抢注案例。
- 商标局审查标准与商标评审委员会(2017年1月)商标评审标准的发布。
- 《关于推进商标注册手续和提高商标注册效率的改革意见》(2017年12月)由工商管理总局发表。
- 发布公开的商标评审委员会决策数据库(2017年12月)。

除了对异议决策质量的担忧之外，商会会员还指出，在过去三份白皮书中提出的一些问题依然突出，特别是与企业名称侵权和恶意抢注相关的问题。

### 企业名称侵权

中国企业注册时使用含有知名外国商标的企业名称并不少见，但地方工商局(AIC)通常却不愿意处理涉及注册商标和企业名称相冲突的案件。2014年《商标法》中为非著名商标持有者提供了诉讼权，规定了若使用商标作为企业名称的行为产生误导公众和构成不正当竞争时，商标注册人可提起诉讼。商会成员希望新《反不正当竞争法》能简化此类案件的处理，特别是第十八条，如果侵权企业未自行更改为不侵权的名称，赋予地方工商局权力将侵权企业名称改成数值码。

### 恶意抢注

2014年《商标法》第7条规定，商标注册申请人必须遵守诚实信用的原则。2014年《商标法》增加了诚实信用的积极责任，商会的会员对此表示欢迎。在2014年和2015年的《白皮书》中，商会曾经指出第7条未被列为反对注册或导致商标无效的独立理由，因此无法确定当被侵权人向商标局和中国商标评审委员会提出异议和无效诉讼时，这一规定能够产生的实际效果。

2015年、2016年和2017年，中国商标评审委员会和北京知识产权法院在许多涉及品牌所有者控告恶意抢注的决议中都提到了第7条，并基于第7条解释了许多更传统的打击恶意抢注的法律条文(如10,1,8,13,15,30,32和44等条款)。中国商标评审委员会和北京知识产权法院在涉及恶意的初步证据时积极利用了第7条，商会对此表示赞赏。

商会的会员注意到最近商标局和商标评审委员会决定将提交相同或高度相似的商标列为恶意抢注，这是最新的改善情况。例如，商标局已经基于绝对理由，主动拒绝申请商标与著名第三方商标相同或高度相似，但是商品和服务完全不同(根据第七条被认为违反了诚实守信的原则；据10.1.8条，和或决定注册的标记会导致不良的社会影响)。除了上述与异议有关的进展之外，在获知国家工商管理总局内部关于创建“黑名单”讨论后，商会会员也备受鼓舞，而该名单将由商标局审查人员提供。

商会很高兴看到2016年12月发布的新《商标审查及审理标准》为处理恶意抢注提供了急需的指导。尤其令人鼓舞的是，《商标法》第32条允许对恶意注册提出异议时提供境外证据。商会希望，商标局通过出台新的评审标准和加强内部质量控制，能够提高涉及恶意商标注册申请的整体决议的一致性和质量。

### 人民法院

商会会员企业很高兴看到北京知识产权法院正在引领中国知识产权领域的司法改革。尤其是，该院为案件评估建立指导性案例以及先例判决，未来几年里，会有越来越多的人民法院引入这类作法。引进先例判决、支持建立“知产宝”数据库等司法改革项目对于中国建立先进、透明和渐进的知识产权法律体系至关重要。商会欢迎上述举措，期待在接下来的一年能够为司法体制提供支持。

中国2017年在南京、苏州、武汉、成都、济南、福州、

- Launch of a publicly available database of TRAB decisions (December 2017).

In addition to concerns regarding the quality of opposition decisions, AmCham China members note that several issues raised in the last three White Papers remain outstanding, specifically those related to enterprise name infringements and bad faith filings.

### Enterprise Name Infringements

It is not uncommon for Chinese companies to register and use enterprise names that incorporate famous foreign trademarks, but local Administrations for Industry and Commerce (AICs) have generally been reluctant to handle cases involving conflicts between registered trademarks and enterprise names. The 2014 Trademark Law provides a cause of action to the registrants of trademarks that are not well known when the use of a trademark as an enterprise name is liable to mislead the public and otherwise constitute unfair competition. AmCham China members are hopeful that the new AUCL will make the handling of such cases easier, and in particular, Article 18, which gives the AICs the power to change an infringing enterprise name to a numerical code if an infringer fails to make appropriate non-infringing changes on their own accord.

### Bad Faith Filings

Article 7 of the 2014 Trademark Law provides that applicants for the registration of trademarks must comply with the principles of honesty and good faith. AmCham China welcomed the addition of a positive obligation of good faith in the 2014 Trademark Law. In the 2014 and 2015 White Papers, we expressed concern that Article 7 was not listed as independent grounds for opposition or invalidation, and there was resulting uncertainty as to the practical effect of this provision in opposition and invalidation proceedings before the TMO and the TRAB.

In 2015, 2016 and 2017, the TRAB and the Beijing IP Court referenced Article 7 in multiple decisions involving challenges brought by brand owners against pirate filings. They have also interpreted many of the more traditional bases for challenging bad-faith filings (such as Articles 10.1.8, 13, 15, 30, 32, and 44) in light of Article 7. AmCham China applauds efforts by the TRAB and the Beijing IP Court to make use of Article 7 in matters involving prima facie evidence of bad faith.

Our members have noted a recent improvement in the quality of TMO and TRAB decisions for matters that involve the filing of identical or highly similar trademarks in bad faith. For example, the TMO has been proactively rejecting applications for trademarks that are identical or highly similar to famous third-party marks and which cover dissimilar goods and services based on absolute grounds (in a perceived violation of the principles of honesty and good faith under Article 7, and/or a determination that

registration of the mark would cause unhealthy social influence under Article 10.1.8). In addition to the developments mentioned above in relation to Oppositions, AmCham members are also encouraged by discussions within the SAIC about creating a “black list” of bad faith filers that would be accessible to TMO examiners.

AmCham China was also pleased to see the introduction of a new “Trademark Review and Adjudication Standards” in December 2016 which provides much needed guidance on the handling of bad faith filings. Members were particularly encouraged to see that foreign-sourced evidence is now acceptable for proving fame in the context of challenges to preemptive registrations under Article 32 of the Trademark Law. AmCham China hopes that the introduction of new review and examination standards, as well as the expansion of internal quality control efforts to cover oppositions, will increase the overall consistency and quality of TMO decisions involving trademark applications filed in bad faith.

### The People’s Courts

AmCham China welcomes the efforts by the Beijing IP Court to instigate judicial reform in the IP field in China. In particular, members are encouraged by the court’s establishment of a Guiding Cases System for the evaluation and introduction of a case precedent system which will ultimately be introduced more widely to the People’s Courts over the next few years. Judicial reform projects, such as the introduction of a case precedent system and support for the roll-out of the “IP House” database, are critically important for the development of a sophisticated, transparent, and progressive IP jurisprudence in China. AmCham China commends these developments and looks forward to supporting the judiciary in the next year.

Our members also welcomed the opening of ten IP tribunals in Nanjing, Suzhou, Wuhan, Chengdu, Jinan, Fuzhou, Qingdao, Hefei, Hangzhou and Ningbo in 2017.

## Recommendations

### *For the Chinese Government:*

- **Make the filing of a trademark in bad faith a clear basis for invalidating trademarks filed by third parties, regardless of how well known the pirated mark is.**
- Finalize the Copyright Law amendments in an expedited manner, reform the Criminal Law to include the criminal liability of enterprise end-user piracy, implement stronger civil remedies against piracy, and expressly criminalize the commercial use of pirated software.

青岛、合肥、杭州以及宁波设立了知识产权法庭，商会会员企业对此非常欢迎。

## 建议

### 对中国政府：

- 将恶意抢注商标作为判定第三方申请商标无效的明确依据，无论被剽窃商标的知名度如何，都应以此为依据。
- 加快确定《著作权法》的最终修订，改进《刑法》，把企业最终用户软件盗版行为列为刑事责任，将盗版行为赋予更大的民事赔偿责任，并且把商业使用盗版软件明确定性为违法行为。
- 全面审查目前的商业秘密保护法律，简化并明确法院间的程序规则，并且限制行政机构对专有商业秘密信息不必要的披露要求。
- 严格执行最高人民法院关于及时公布案件的命令。
- 为保证法规的一致性，《专利审查南修改草案》中关于商业方法专利的新规定应当符合《专利法》“新的技术方案”的要求。
- 修改《专利法》，对实用新型专利的创造性设置更高的标准要求，限制对实用新型专利的补偿，在实用新型专利的专利权人启动侵权诉讼程序时要求对该实用新型进行审查和评估，限制实用新型专利的可转让性。
- 加强专利纠纷的司法程序，《专利法》的修订避免扩大针对专利的行政执法。

### 对美国政府：

- 分享美国联邦和各州有关商业秘密法律以及美国国家商业秘密战略方面的最佳实践。

- Undertake comprehensive review of current trade secrets protection laws, streamline and clarify procedural rules among courts, and restrain administrative agencies from requesting unnecessary disclosure of proprietary trade secrets information.
- Rigorously implement the Supreme People's Court's directives on the timely publication of cases.
- Align the new business method patent rules in the "Revisions to the Patent Examination Guidelines" with the "new technical solution" requirement of China's Patent Law to ensure regulatory consistency.
- Amend the Patent Law to set a higher bar for the inventiveness of UMPs, limit remedies for UMPs, require examination and assessment upon the UMP patentees' initiation of infringement proceedings, and limit the assignability of UMPs.
- Strengthen the judicial process for patent disputes and avoid expanding administrative enforcement of patents in amendments to the Patent Law.

*For the US Government:*

- **Share best practices from US federal and state trade secrets laws and national trade secrets strategy.**





# Investment Policy

## Introduction

American companies doing business in China are proud to be part of China’s development story, and are encouraged by certain developments in the investment environment in 2017, as well as by commitments by the Chinese government to undertake deeper procedural and substantive reforms in the coming years. AmCham China and its members appreciate the complexity of the reform process and are available to provide input to the government as it assesses current reforms and moves forward with even more thorough ones, including the drafting and implementation of a new comprehensive foreign investment law.

While there have been a number of improvements in the environment for foreign investment, our members remain concerned that the pace of expanding market access and the resolution of longstanding concerns regarding transparency, predictability, fairness, and technology transfer and IP practices has been too slow. Chinese investors in the US currently enjoy better treatment in the US on these metrics than American investors do in China. Indeed, in the 2018 AmCham China Business Climate Survey, 58 percent of respondents reported having been treated unfairly relative to domestic competitors. And although it is marginally better than the same statistic last year, 75 percent of respondents said that they feel foreign businesses are less welcome in China than before.

AmCham China believes that a strong Chinese economy is necessary for a strong American—and global—economy. As China attempts to transition to an innovation-led economy—in which global expertise, collaboration, supply chains, and technology are critical—resolving the concerns of foreign investors in China, who are amongst the greatest advocates of mutually beneficial Sino-US engagement, will be of increasing importance. We encourage the Chinese government to expand dialogue with the foreign business community in China to address these longstanding concerns.

## Inbound and Domestic Investment

AmCham China members and other foreign investors continue to make significant contributions to the Chinese economy. The Ministry of Commerce (MOFCOM) has

reported that in 2017, foreign investment in China grew by four percent in US dollar terms (and 7.9 percent when calculated in RMB), with 27.8 percent growth in the number of new foreign-invested enterprises established in the country over the previous year. At the 19th Congress of the Communist Party of China in March 2018, President Xi Jinping expressed a commitment to further opening the Chinese market to foreign investors. “Opening brings progress,” he said, “while closing will necessarily lead to backwardness.” He added that “all businesses registered in China will be treated equally.” President Xi continued the theme of promoting openness and a better environment for foreign investment at the April 2018 Boao Forum for Asia, announcing progress towards some market opening commitments, particularly in the financial sector. In 2017, the State Council issued two high-level circulars directing government agencies to take steps to improve China’s attractiveness as a foreign investment destination. AmCham China members fully agree with President Xi on the importance of foreign investment and fair competition, and seek greater implementation of those principles in actual policy and practice.

Chinese inbound and domestic investment policies have undergone significant procedural and substantive changes since late 2016. After years of testing foreign investment reforms in China’s pilot free trade zones (PFTZs), and testing new approaches for managing domestic investment in certain provinces, the Chinese government has begun to roll out certain investment reforms nationwide. Perhaps most importantly, Chinese policymakers are implementing a “negative list approach” for domestic and foreign investment. The negative list approach to investment refers to a presumption of openness in the absence of an explicit restriction or approval requirement indicated by inclusion on a “negative list.” The various negative lists being implemented in China serve different purposes, cover different classes of investors, and may need to be cross-referenced depending on each investor’s situation.

Once the system is implemented—currently expected in 2018—all private investors (foreign and domestic) seeking to invest in China will be able to consult a nationwide negative list. Foreign investors will also need to consult a separate, supplemental list of restrictions contained on a foreign investment negative list in order to understand both substantive restrictions and applicable approval require-

# 投资政策

## 引言

**在** 华开展业务的美国企业为其能够参与到中国经济的发展感到自豪，也因 2017 投资环境的一些改善以及中国政府承诺将在未来几年深化实质性的程序改革而备受鼓舞。中国美国商会（商会）以及会员企业理解这些改革的复杂性，并希望向政府提出意见和建议，以评估当前改革，并推进更深入的改革，包括起草和实施一项新的综合性外商投资法。

虽然外商投资环境已经有了一些改善，但商会会员企业仍然担心扩大市场准入步伐太慢，解决长期关切问题如透明度、可预见性、公平、技术转让和知识产权等的进度过于缓慢。就目前而言，中国投资者在美国受到的待遇比美国投资者在中国要好。事实上，在 2018 年商会《营商环境调查报告》中，58% 的受访企业表示，相对于国内竞争对手而言，他们在这些方面受到了不公平的待遇。尽管该数字比去年的统计略好一些，但 75% 的受访会员企业仍表示，他们感到外国企业在中国越来越不受欢迎。

商会认为，美国和全球经济的强大需要一个强大的中国经济。在中国尝试向创新型经济转型的过程中，全球专业知识、合作、供应链和技术十分关键。外商投资者倡导中美合作互利互惠，因此解决外国投资者在中国的问题将会越来越重要。我们鼓励中国政府扩大与外国商界的对话，解决这些长期存在的问题。

## 来华投资和国内投资

商会会员企业和其他外国投资者继续为中国经济作出重要贡献。商务部报告称，2017 年，在华投资以美元计算增长了 4%（按人民币计算增长了 7.9%）。在过去一年里，中国新增外商投资企业数量增长了 27.8%。2018 年 3 月在中国共产党第十九次代表大会上，习近平主席作出了进一步向外国投资者开放中国市场的承诺。“开放带来进步”，

他说，“而封闭必然导致落后”。他补充道，“对所有在中国注册的企业一视同仁”。习主席在 2018 年 4 月的博鳌论坛上进一步地延续了对外资的友好开放的主题，并且宣布了对开放市场的承诺和进展，尤其是在金融市场。2017 年，国务院发布了国发 5 号文和国发 39 号文，指示相关政府机构采取措施，提高中国作为外国投资目的国的吸引力。商会会员企业完全同意习主席对外商投资和公平竞争的重要性的认识，并希望在实际政策和实践中更有力地执行这些原则。

自 2016 年末以来，来华投资和国内投资政策发生了重大的程序性和实质性变化。对中国在自由贸易试验区进行外商投资改革测试，以及对某些省份国内投资管理新方法检验多年后，中国政府已经开始在全国范围内推行一些投资改革。最重要的或许是中国政策制定者正在实施一项针对国内外投资的“负面清单制度”。投资“负面清单”制度指的是在没有明确的限制或“负面清单”批准要求的情况下，施行的默认公开原则。中国实施不同种类的负面清单有不同的用途，针对不同类别的投资者，因此可能需要根据每个投资者的情况交叉参照。

一旦实施该制度（目前预计在 2018 年实施），所有试图在华投资的国内外私人投资者将能够查看全国范围的负面清单。外国投资者还将需要查看一份外国投资负面清单里单独的补充限制清单，来了解实质性限制和适用的审批要求。在自由贸易试验区投资的外国投资者将适用于另一份单独的、相对宽松的自由贸易试验区负面清单。此外，来自香港和澳门的投资者，需要参考外国投资负面清单以及适用的《关于建立更紧密经贸关系的安排》投资协议中的负面清单，查看来自香港、澳门特别行政区的投资者是否可能获得优惠待遇。商会简要讨论下面这些负面清单，并参考了一些列出鼓励外国投资领域的其他文件。

ments. For foreign investors seeking to invest in a PFTZ, a separate and less restrictive PFTZ negative list will apply. Moreover, investors from Hong Kong and Macau will need to consult both the foreign investment negative list and also the negative list in the applicable Closer Economic Partnership Arrangement (CEPA) Investment Agreement to see if they may benefit from preferential treatment for investors from each of these two special administrative regions (SARs). We briefly discuss these negative lists below, and also refer to some other documents that list areas in which foreign investment is encouraged.

### ***Nationwide Investment Negative List***

Beginning in late 2015, Chinese policymakers began to explore the possibility of implementing a negative list approach toward the management of investment in China's domestic market, such that private investment (by all private investors, domestic and foreign) would be considered permitted unless explicitly restricted on negative list(s). In March 2016, the National Development and Reform Commission (NDRC) and MOFCOM jointly issued a pilot negative list to be tested in four provincial-level jurisdictions: Tianjin, Shanghai, Fujian, and Guangdong (note that these are the same four jurisdictions that hosted the first PFTZs). In November 2017, an additional 11 provincial-level jurisdictions were added to the pilot program. Officials have indicated that a nationwide investment negative list will be released and implemented in 2018.

Once implemented, the nationwide negative list is to serve as a comprehensive and exclusive list of investment restrictions that apply to all private investors in China, whether engaged in greenfield investments, expansions of existing investment projects, mergers and acquisitions, or other forms of investment activity. Each item on the list is to be based on corresponding provisions of Chinese laws and regulations, and restrictions in laws and regulations not listed on the negative list are to be eliminated. If a type of investment falls within the parameters of an item on the negative list, investors will need to consult underlying laws and regulations to understand the scope and applicability of the restriction.

As of the date of publication, the nationwide negative list has yet to be published, meaning that investors must continue to refer to restrictions scattered across Chinese laws, regulations, and policy catalogues for the time being.

### ***Foreign Investment Negative List and Streamlining of MOFCOM Investment Approvals***

The negative list approach in the context of foreign investment was first piloted in China's PFTZs—first established in Shanghai in 2013, followed in 2014 by three others, and expanded in March 2017 to a total of 11. In September 2016, the National People's Congress Standing Committee also passed amendments to the country's core investment laws,

followed by corresponding implementing regulations, paving the way for the national roll-out of these investment reforms.

After the nationwide investment negative list is promulgated, foreign investors will need to consult both that list and a supplemental list (already in effect) that imposes additional restrictions on foreign investors (i.e., a list of deviations from national treatment available to Chinese investors). In addition to listing areas in which foreign investment is restricted or prohibited, the foreign investment negative list also plays an important role in determining which investments require foreign investment approval from MOFCOM. Investments not included on the foreign investment negative list may now bypass this specific approval requirement—which, before October 1, 2016, applied to all foreign investments—and instead submit a simpler record filing to MOFCOM (other additional investment approval requirements applicable for some sectors are unaffected and remain in effect). When these procedural reforms were first implemented in October 2016, they applied only to greenfield investments. In July 2017, they were expanded to cover mergers and acquisitions as well as strategic investments by foreign investors into Chinese publicly listed companies.

At least for the time being, the sections on restricted and prohibited investments in the Catalogue of Industries for Guiding Foreign Investment (Foreign Investment Catalogue) have been designated as the national foreign investment negative list. (Note that the Foreign Investment Catalogue also contains a list of areas in which foreign investment is “encouraged.”)

Substantively, the contents of the negative list portion of the Foreign Investment Catalogue (i.e., the “restricted” and “prohibited” lists) have been trimmed over the years. While some of those reductions have represented genuine market liberalization, others were simply structural changes and the grouping together of previously separate items. The 2017 Foreign Investment Catalogue contains 35 restricted items and 28 prohibited items, cumulatively resulting in a 63-item negative list for foreign investment. It embodies a number of liberalizations in the manufacturing, services, and mining sectors. The 2017 Foreign Investment Catalogue also creates some new restrictions, for instance prohibiting foreign investors from audiovisual and electronic publication editing, as well as public Internet information services. Part of the overall reduction in the number of items that are restricted or prohibited as compared to the 2015 Foreign Investment Catalogue is a result of the new purpose of the document as a negative list, with some items on the 2015 Catalogue removed as they applied to both foreign and domestic investment. Those items are expected to reappear on the nationwide negative list.

As stated above, the negative list approach for foreign investment was first piloted in China's PFTZs. Foreign investors seeking to invest in the PFTZs should consult a separate PFTZ negative list, rather than the Foreign Investment

## 全国投资负面清单

2015年底以来，中国的政策制定者开始探索在中国国内市场投资管理中实施负面清单的可能性。这样，除非在相关的负面清单上有明确限制，可以考虑允许所有国内外私人投资者进行私人投资。2016年3月，国家发改委和商务部联合发布了一份试点负面清单，将在4个省级司法管辖区：天津、上海、福建和广东（该四个地区是第一批自由贸易试验区所在地）进行试点。2017年11月，试点项目增加了11个省级行政区。有关官员们表示，2018年将发布实施全国范围内的投资负面清单。

一旦实施，全国范围的负面清单将是唯一一份全面的投资限制清单，适用于所有在华的私人投资者，进行包括绿地投资、扩大现有投资项目、并购或其他形式的投资活动。清单上的每一项都是以中国法律法规相应规定为基础；没有列入负面清单中法律法规的限制将被取消。如果一项投资符合负面清单上项目的参数，投资者需要参考相关的法律法规来了解限制的范围和适用性。

截至发稿日，全国负面清单尚未公布，这意味着投资者必须继续参考当前中国法律、法规和政策目录中的限制。

### 外商投资负面清单与精简商务部投资审批

外国投资负面清单制度首先在中国自由贸易试验区试点施行，2013年在上海，2014年又在其他3个地区引入，并在2017年3月扩大到11个地区。2016年9月，全国人大常委会表决通过了修改《外资企业法》等四部重要投资相关法律的决定，并出台了相应的实施条例，为国家推行这些投资改革铺平了道路。

在颁布全国性投资负面清单后，外国投资者将需要同时参考该清单和对外国投资者施加额外限制的补充清单（已经生效），这是一份针对非国有中国投资者获得的国民待遇偏差清单。外商投资负面清单除了列出限制或禁止外商投资的领域外，还在决定哪些投资需要商务部批准外商投资方面发挥了重要作用。外国投资负面清单上没有的投资现在可以绕过在2016年10月1日之前适用于所有外国投资的特定审批要求，向商务部提交一份更简单的备案文件（其他适用于某些行业的额外投资审批要求不受影响，仍然有效）。以上程序改革在2016年10月首次实施时，只适用于绿地投资。2017年7月，改革扩大到并购以及外国投资者对中国上市公司的战略投资。

至少目前，《外商投资产业指导目录》（《外商投资目录》）

中的限制性和禁止性投资项目已被列入国家外商投资负面清单（外商投资目录还列出了鼓励外国投资的领域）。

实质上，外商投资目录负面清单项目（即“限制”和“禁止”类清单）的数量已经大大减少。虽然其中一些数量削减代表了真正的市场自由化，但另一些则只是结构上的改变，将以前单独的项目组合在一起。2017年外商投资目录包含35项限制项目和28项禁止项目，累计产生了63项外商投资负面清单。主要在制造业、服务业和采矿业等放宽了限制。2017年《外商投资目录》还出台了一些新的限制措施，例如禁止外国投资者进入视听、电子出版物编辑以及公共互联网信息服务。和2015年外商投资目录相比，整体减少的限制或禁止项目是由该目录作为负面清单的新作用而决定的，删除了2015年目录中一些同时适用于国内外投资的项目。这些项目预计将重新出现在全国的负面清单上。

如上所述，外商投资负面清单制度是先在中国自贸区试点。希望在自贸区投资的外国投资者应参考单独的自贸区负面清单，而不是外商投资目录。2017年7月发布了一份新的自贸区负面清单，比2015年的版本减少了27个条目。两个清单中的行业相似，但自贸区的负面清单仍然限制更少。

### 香港和澳门投资者的负面清单

与其他外国投资者相比，香港和澳门的投资者可能获得一定的优惠待遇，此外，还必须参考单独的补充负面清单来确定是否可以获得相应待遇。2017年6月，中国内地和香港特别行政区政府达成了更紧密经贸关系安排投资协议，香港投资者在中国大陆的投资，除了协议附件中不符措施外（如香港负面清单），将获得国民待遇（与大陆同等待遇）和最优惠的待遇（待遇至少与其他贸易和投资合作伙伴相同）。香港的负面清单涵盖了香港投资者在中国内地不能享受保护措施的16种特殊情况（注意：中国投资者在香港没有免责例外）。《安排》投资协定包括两方政府承诺在非歧视性基础上向对方地区的投资者提供某些保护。如果外商投资的负面清单相比香港的负面清单允许更大的市场准入或者情况相反，两者中相对较自由的一方将适用。

中国大陆和澳门特区政府于2017年12月签订了类似的《安排》投资协议。香港和澳门的投资协定于2018年1月1日生效。

### 鼓励外商投资特定行业和地区

虽然负面清单强调投资限制，但中国也给出鼓励外资的行业和地区。《外商投资目录》的第一部分包含了中国

Catalogue. A new PFTZ negative list was issued in July 2017, narrowing the 2015 version by 27 items. The industries included in these two lists are now similar, but the negative list of PFTZs still contains fewer restrictions.

In April 2018, NDRC indicated that new versions of the nationwide foreign investment negative list and the PFTZ negative list would be released in the first half of the year, with substantial relaxations on foreign investment in a wide range of industry sectors. At the same time, NDRC published timelines for the easing of foreign ownership limits in the automotive, shipbuilding, and aircraft manufacturing industries.

### ***Negative List for Investors from Hong Kong and Macau***

Investors from Hong Kong and Macau may receive certain preferential treatment compared to other foreign investors, and must additionally consult separate supplemental negative lists to identify such opportunities. In June 2017, the mainland Chinese and Hong Kong SAR governments entered into the Closer Economic Partnership Arrangement Investment Agreement under which investments by Hong Kong investors in mainland China are to be provided with national treatment (equal treatment with their mainland counterparts) and most favored treatment (treatment at least as beneficial as that provided to other trade and investment partners), except for non-conforming measures listed in an annex to the agreement (i.e., the “Hong Kong Negative List”). The Hong Kong Negative List contains 16 exceptions from these protections for Hong Kong investors in mainland China (note that there are no exceptions for Chinese investors in Hong Kong). The CEPA Investment Agreement includes commitments by both governments to offer certain protections to investors from the other region on a non-discriminatory basis. To the extent that the foreign investment negative list allows greater market access than the Hong Kong Negative List, or vice versa, the more liberal of the two would apply.

The mainland Chinese and Macau SAR governments entered into a similar CEPA Investment Agreement in December 2017. Both the Hong Kong and Macau investment agreements went into effect on January 1, 2018.

### ***Encouraging Foreign Investment in Certain Industries and Regions***

While negative lists highlight restrictions on investment, China also outlines industries and regions where foreign investment is encouraged. Part I of the Foreign Investment Catalogue contains a list of 348 areas in which foreign investment is encouraged by the Chinese government. Other documents, such as the Priority Industries Catalogue in the Central and Western Regions, indicate foreign investments that are encouraged in less economically developed central and western parts of China. This catalogue was

updated in March 2017, and contains 139 more items than its 2013 version.

AmCham China members welcome these efforts to develop a more comprehensive and transparent framework for investment in China. We also welcome efforts to streamline the investment approval process by introducing record filing with MOFCOM for most foreign investments -- except where items are included on a negative list. We are hopeful that the various lists will be kept up to date and that officials will not informally or arbitrarily apply additional restrictions; MOFCOM approval is just one of several approval steps during which officials may be tempted to impose informal requirements and restrictions.

We emphasize that many types of investments open to Chinese investors in the US are not open to American investors in China. In the spirit of equal treatment and win-win cooperation, AmCham China members encourage the Chinese government to further reduce the market access restrictions contained on these negative lists and allow foreign investors the same degree of investment freedom that Chinese investors enjoy when investing in the US. We eagerly await the anticipated announcements of market access openings promised by Chinese officials over the course of 2018.

We note that the reforms described above as they pertain to foreign investors are expected to be consolidated and supplemented by other reforms as China develops a new, comprehensive law on the management of foreign investment. An early draft of the law was released for public comment in early 2015. AmCham China and its members appreciate early opportunities to provide input and hope that their input will be fully considered in the drafting process. We would be pleased to provide input as the government moves forward with these important reforms.

In the next section, we discuss outbound investment policies aimed at stemming capital outflows from China. We must also mention in this section, however, that Chinese government efforts to reduce capital outflows have also affected foreign investors in China. Tighter enforcement and more extensive documentation requirements for the remittance of profits made by foreign-invested enterprises have turned back the clock on what appeared to be a general trend of easing regulation in this regard.

## **Outbound Investment**

As net capital outflows increased and China’s foreign exchange reserves fell, the Chinese government took multiple steps in 2017 to enhance and tighten the regulation of outbound investment.

In August 2017, the State Council issued guidance that categorized various forms of outbound investment as “encour-

政府鼓励外商投资的 348 个领域。《中西部地区外商投资优势产业目录》等其他文件则说明了在经济欠发达的中西部地区所鼓励的外商投资。该目录在 2017 年 3 月更新，比 2013 年的版本多了 139 项内容。

商会会员企业大力支持为在华投资建立更加全面、透明的框架所作出的努力。会员企业还欢迎大部分外商投资可以通过向商务部提交备案文件来简化投资审批流程——列入负面清单的项目除外。商会希望保持更新各种清单，官员们不会随意或任意地施加额外的限制；由于商务部审批只是几项批准步骤中的一环，在此期间，官员们可能会施加一些非正式的要求和限制。

商会强调，许多类型的投资，美国对中国投资者是开放的；但对在华的美国投资者是不开放的。本着平等相待、合作共赢的精神，商会会员企业鼓励中国政府进一步减少这些负面清单中的市场准入限制，允许外国投资者享有中国投资者在美国投资时同等的投资自由度。

商会注意到，在中国制定新综合外商投资管理法的同时，上述有关外商投资者的改革预计将因此得到巩固和补充。2015 年初，该法律草案公开征求公众意见。商会和其会员企业感谢早期提供意见的机会，并希望起草过程中充分考虑到他们的意见。在政府推进这些重要改革的过程中，商会很乐意提供意见。

在下一节中，商会将讨论旨在遏制中国资本外流的对外投资政策。然而，商会也必须在这一节中提到，中国政府努力减少资本外流也影响到了在华外国投资者。就外资企业利润汇出执行更严格、文件要求更繁杂这一点而言，似乎在普遍放松管制的大背景下有倒退的趋势。

## 对外投资

随着资本净流出增加，中国外汇储备下降，中国政府在 2017 年采取了多项措施，加强对境外投资的监管。

2017 年 8 月，国务院发布了“鼓励”、“限制”、“禁止”等各类形式对外投资的指导意见。指南中关于如何鼓励或限制特定类型投资的信息是有限的。然而，指导意见中明确指出“限制”性投资，尤其是在敏感国家和地区的投资；投资“房地产、酒店、影院，娱乐或体育俱乐部”等产业；投资“建立在中国境外、没有具体商业项目的私人股本基金平台”等，将通过发改委的“验证和批准”过程接受严格审查。

2017 年 8 月，国家发改委关于对外投资新规定部分实施，如《企业对外投资的管理措施》（“对外投资措施”），《对外投资敏感行业目录》，《国家发改委发行关于企业对外投资行政措施的配套模板》等。《对外投资措施》于 2018 年 3 月 1 日生效，并取代了国家发改委 2014 年开始实施的对外投资规定。简化并解决了对外投资审批过程中某些效率低下的问题，包括：

- 取消就境外收购项目估值在 3 亿美元以上，境外投资者需向国家发改委提交项目信息报告并收到中国国家发改委确认（所谓“路线图”）后才能开始实质性工作的规定。
- 允许投资者在项目签署后 / 预结算周期内，接受国家发改委的“备案”或审批流程（配合国家发改委对标准交易流程的审查）。
- 允许地方企业直接向国家发改委提交敏感项目申请，不需要省级发改委审查。

这些措施还扩大了受监管活动的覆盖范围，包括非中国实体在中国实体或国民控制下进行的敏感或大规模投资（如价值超过 3 亿美元的投资）。此外，对外投资办法制定了新的机制，强化了现有机制，使政府能够通过包括新增的报告要求等监督对外投资。

据 2014 年境外投资规则，《境外投资措施》和《境外投资敏感行业目录》中的投资敏感行业清单，属于《境外投资措施》核准程序范围的境外投资，涉及的行业范围比 2014 年对外投资规定中敏感行业的范围更广。部分原因是如上内容列入了 2017 年 8 月国务院指导意见中列举的项目。值得注意的是，2014 年一些敏感项目（如大型土地开发和输电线路和电网）不再被归类为敏感项目。

同样在 2017 年 12 月，五部委联合发布了《私营企业境外投资和经营活动行为准则》。这些法规旨在改善治理，降低风险，并改善私人中国境外投资者遵守法律和社会义务的情况。

中国政府对国有企业（“国有企业”）的境外投资进行更严格的监管。2017 年 1 月，国有资产监督管理委员会（“国资委”）发布了《中央国有企业境外投资监督管理办法》，再次强调未经国资委批准，禁止中央国有企业进行主营业务范围以外的投资。办法还规定，国资委将发布新的中央国有企业境外投资受到限制或禁止的行业负面名单。该负面清单尚未公布。地方国资委同行可以在其管辖范围内对国有企业实施类似的规定。

aged,” “restricted,” or “prohibited.” The guidance contained limited information as to how particular types of investment would be encouraged or restricted. However, the guidance did specifically indicate that a subset of “restricted” investments—specifically, investments in sensitive countries or regions, investments in “real estate, hospitality, film cinemas, entertainment or sports clubs,” and investments in “private equity funds [and] investment platforms established outside the territory of China without concrete commercial projects”—would be subject to heightened scrutiny through NDRC’s “verification and approval” process.

That August 2017 guidance was implemented in part by new outbound investment rules from NDRC, set out in the Administrative Measures for Outbound Investment by Enterprises (“Outbound Investment Measures”), the Catalogue of Sensitive Industries for Outbound Investment, and the Circular of NDRC on Issuing Accompanying Templates for the Administrative Measures for Outbound Investment of Enterprises. The Outbound Investment Measures went into effect on March 1, 2018 and replaced NDRC’s previous outbound investment rules from 2014. They streamline and address certain inefficiencies in the outbound investment approval process, including by:

- Eliminating the requirement that an outbound investor file a project information report with NDRC and receive confirmation thereof (a so-called “roadmap”) prior to beginning substantive work on an outbound acquisition project valued at more than US\$300 million,
- Allowing investors to undergo NDRC’s “record-filing” or verification and approval process during the post-signing/pre-closing period of a project (fitting NDRC’s review more neatly into standard deal processes), and
- Allowing local enterprises to directly submit applications for sensitive projects to the central-level NDRC instead of also requiring provincial-level DRC review.

The measures also expand the coverage of regulated activity to include sensitive or large investments (i.e., investments greater than US\$300 million in value) made by non-Chinese entities under the control of Chinese entities or nationals. Further, the Outbound Investment Measures set out new mechanisms and fortify existing mechanisms that enable the government to supervise outbound investment, including newly added reporting requirements.

The list of sensitive industries for investment in the Outbound Investment Measures and the Catalogue of Sensitive Sectors for Outbound Investment—outbound investments which are subject to the verification and approval processes under the Outbound Investment Measures—cover a broader range of industries than those treated as sensitive under the 2014 outbound investment rules, in part due to the inclusion of the items enumerated under the August 2017 State Council guidance, as mentioned above. Notably, some items that were treated as sensitive in 2014 (such as large-scale land

development and power transmission lines and power grids) are no longer categorized as sensitive.

Also in December 2017, five ministries jointly issued the Code of Conduct on Outbound Investment and Business Activities for Private Enterprises. These regulations seek to improve governance, reduce risks, and improve compliance with legal and social obligations by private Chinese outbound investors.

Outbound investments by state-owned enterprises (SOEs) are regulated even more tightly by the Chinese government. In January 2017, the State-Owned Assets Supervision and Administration Commission (SASAC) issued the Administrative Measures on the Supervision of Central SOE Outbound Investment, reemphasizing a prohibition against central SOE investments outside of SOEs’ main lines of business without SASAC approval. These measures also provide that SASAC is to issue a new negative list of industries in which outbound investment by central-level SOEs is restricted or prohibited. That negative list has yet to be published. Local SASAC counterparts may implement similar rules for SOEs under their jurisdiction.

AmCham China and its members believe that the benefits of Chinese outbound investment, for both investors and their counterparties, will be best achieved when Chinese investors are able to undertake their transactions on the basis of economic considerations, without the policy-driven uncertainty that is sometimes introduced by China’s outbound investment rules, or the policy-driven support that the Chinese government provides in certain sectors or to select investors. We accordingly recommend that the Chinese government reduce both forms of influence and allow market forces to play the decisive role in outbound investment.

## State-Owned Enterprise Reforms

For many years, the Chinese government has been working to reform SOEs in order to make them more efficient and competitive. SOEs once played dominant roles in the economy and in the provision of social services, but now provide only one-third of China’s economic output and 16 percent of the country’s jobs, while accounting for an outsized share of corporate debt. Among other efforts, the Chinese government has been trying to corporatize the SOE sector by restructuring central SOEs into joint stock and limited liability companies. In late July 2017, the State Council announced that all central SOEs (except those in cultural and financial industries) would complete this type of corporate restructuring by the end of 2017, and a SASAC official stated in January 2018 that this goal had largely been met.

This corporatization of the SOE sector has allowed the introduction of private capital into Chinese SOEs. Since late 2016, regulators have made significant progress in advancing mixed-ownership (mixed public and private ownership)

商会会员企业认为，中国的境外投资，在不受中国境外投资规定中政策导向不确定性影响；或者中国政府为某些行业或选择某些投资者给与政策支持的影响时，能够基于经济考虑进行交易，其投资者及交易伙伴才能实现利益最大化。因此，我们建议中国政府降低以上两种形式的影响力，并允许市场力量在境外投资中发挥决定性作用。

## 国有企业改革

多年来，中国政府一直致力于改革国有企业，以提高国企的效率和竞争力。国有企业曾经在经济和社会服务方面发挥了主导作用。但现在只贡献了中国经济产出的三分之一，为国家提供 16% 的就业机会，却在企业债务中占了很大比重。在其他项目中，中国政府一直试图将国企重组为股份有限公司和有限责任公司。2017 年 7 月下旬，国务院宣布，所有中央国有企业（除文化和金融行业外）将在 2017 年底前完成这类企业重组，并于 2018 年 1 月宣布，目标已基本实现。

国有企业的公司化已经允许将私人资本引入中国国有企业。自 2016 年末以来，监管机构在推进混合所有制（混合所有制和私营所有制）国企改革方面取得了重大进展。2016 年 11 月，国家发改委和国资委选定了 9 家中央国企试点混合所有制。从 2017 年 3 月开始，又增加了 10 家中央国企。第三轮将于 2018 年开始，届时将有 31 家国企参与，其中 10 家在中央，21 家在地。中国领导人也促进了国有企业之间的合并，希望合并能降低低效。这些行动已经产生了重大影响。值得注意的是，2017 年 8 月，包括阿里巴巴、百度、腾讯和京东在内的 14 家中国公司购买了价值 120 亿美元的国有电信巨头中国联通的股份。尽管外国投资者也受邀加入其中一些混合所有制企业，但是外资参与混合所有制企业的程度尚不清楚。

根据之前的官方声明，混合所有制改革是朝着更全面的国企改革迈出的小一步，它将允许政府从国有企业管理者的角色转变为一个股东。私人投资者（包括外国投资者）将有空间来帮助国有企业进行管理层重组，并进行各种市场化改革，使国有企业更精简、利润更高、更具市场竞争力。

商会继续支持政府的国企改革，并希望通过允许更多私人资本的参与，使国企更加雄心勃勃。国有企业的结构改革以及政府从公司治理的职能转变为公正的监管机构，将会促成更高效、更公平、更有竞争力的市场格局。随着

改革努力的推进，商会的会员企业也可以寻求外商投资机会平等以及受到平等待遇。除了投资，会员企业还可以为国企带来宝贵的管理和战略经验。

## 国家干预投资环境的目标：产业政策与国家安全

中国政府积极管理中国的私人投资环境（以及中国在海外的投资环境），以推动实现其产业政策目标和广泛界定的国家安全利益——这些目标有时很难区分。

尽管中国已经取消了经济系统的生产配额和苏联式中央计划的其他特点，但中国仍继续高度重视高层次的产业政策，重申政府发展重心，并为实现这些目标提供指导和激励政策。这些产业政策有多种形式，包括国家五年计划、地方和行业具体计划和政策、中期和长期计划等。随着中国政府努力将中国的产业发展“提升至价值链”，中国正越来越着眼于发展高科技产业。通过产业政策文件和活动，如“2025 年中国制造”“互联网+”和“新一代人工智能发展计划”（信息通信技术和机械制造章节进一步讨论），中国政府提出一系列战略，促进中国在高科技制造、数字经济和人工智能等领域取得领先地位，使中国企业在国际市场上具有竞争力。这不仅会造成市场扭曲，中国的产业政策和实施政策的手段可能会导致外国投资者受到区别对待，并挫伤他们对中国市场的热情。因为中国正在推进一系列重点高新技术产业，包括新能源汽车、自动驾驶系统和人工智能等，这些问题让人不免更加担忧。

中国越来越重视高科技目标，外国投资者见证到国家安全利益和产业政策目标不断混合。商会会员企业长期以来一直担心以安全之名区别对待外国技术。例如 2007 年首次起草的“信息安全等级保护”，就要求敏感程度评级在一定程度的中国信息系统只能使用由国内独资或控制的企业制造的信息安全产品，其核心技术或关键部件仅能包含国内知识产权。最新的法规让人不免更加担忧。新出台的《网络安全法》（于 2017 年 6 月生效）也有上述《信息安全等级保护》中关于网络安全的同样表述。其他法律、法规已经引入“安全可控”标准（或类似措辞）。最著名的是于 2014 年末和 2015 年初发行的银行业的法规，随后由于外国企业和政府的担忧而撤销，因为该指南要求或鼓励他们使用拥有国内知识产权的技术。中国的法律法规也越来越多地纳入数据本地化要求，这可能会使跨国公司把数据移出中国变得更加复杂。政策制定者目前正在起草法规



SOE reforms. In November 2016, NDRC and SASAC selected nine central-level SOEs for pilot mixed-ownership initiatives. Another 10 central-level SOEs were added in a second round beginning in March 2017. A third round is to begin in 2018 with 31 SOEs participating—10 at the central level and 21 at local levels. Chinese leaders have also promoted mergers between SOEs, hoping that consolidation will reduce inefficiencies. These efforts have already had a significant impact. Notably, in August 2017, a group of 14 Chinese companies including Alibaba, Baidu, Tencent, and JD purchased \$12 billion worth of shares in state-owned telecom giant China Unicom. Though foreign investors have been invited to participate in some of these mixed-ownership companies, the degree of foreign participation in mixed-ownership companies is unclear.

According to official statements in the past, mixed-ownership reforms are meant to be a transitory step toward greater overall SOE reform that would allow the government to step away from a managerial role in SOEs and become, simply, a shareholder instead. Private investors (including foreign ones) would have space to help restructure SOE management and institute various market-oriented reforms to make SOEs leaner, more profitable, and more market-competitive.

AmCham China continues to support the government's SOE reform efforts, and hopes that they will, in time, become more ambitious by allowing for greater participation of private capital. Structural reforms of SOEs and the transition of the government from a corporate governance role into that of an impartial regulator will lead to a more efficient, fair, and competitive market landscape. Our members seek equal opportunities for and treatment of foreign investment as the reform effort moves forward. Beyond investing, our members can also bring valuable managerial and strategic expertise to the SOE sector.

## Goals of State Intervention in Investment Environment: Industrial Policy & National Security

The Chinese government actively manages the environment for private investment in China (and Chinese investment abroad) in order to promote its industrial policy goals and address broadly defined national security interests—purposes that can be difficult to distinguish at times.

Although it has moved away from economy-wide production quotas and other hallmarks of Soviet-style central planning, China continues to give a central place to high-level industrial policies that reaffirm the government's development priorities and provide guidance and incentives in order to pursue them. These industrial policies take a wide variety of forms, including the national five-year plan, local and industry-specific plans and policies, and medium- and long-term plans. As the Chinese government seeks to move China's industrial development "up the value chain," it is

increasingly setting its sights on developing high-technology industries. Through industrial policy documents and initiatives such as "Made in China 2025," "Internet +," and the "Next Generation Artificial Intelligence Development Plan" (further discussed in the ICT and Machinery Manufacturing chapters), the Chinese government outlines a series of strategies to make China a world leader in high-tech manufacturing, the digital economy, and artificial intelligence, and to make Chinese companies competitive internationally. Beyond creating market distortions, Chinese industrial policies and the tools used to implement them can lead to discrimination against foreign investors and dampen their enthusiasm for the Chinese market. These concerns have risen as China promotes a number of priority high-tech industries, including new energy vehicles, autonomous driving systems, and artificial intelligence.

As China's aims become more high-tech, foreign investors have seen an increased co-mingling of national security rationales and industrial policy goals. AmCham China members have had long-standing concerns about discrimination against foreign technology in the name of security, such as with the "Multi-Level Protection Scheme" (MLPS), first drafted in 2007, which requires Chinese information systems graded as above a certain level of sensitivity to, among other things, use only information security products that are manufactured by domestically wholly-owned or controlled entities and whose core technologies or critical components contain only domestic intellectual property. Recent legislation has only compounded and extended these concerns. The new Cybersecurity Law, which went into effect in June 2017, contains language replicating the MLPS approach in the cybersecurity context. Other laws and regulations have introduced a "secure and controllable" standard (or some variant thereof)—most famously banking sector guidelines issued in late 2014 and early 2015 that were later withdrawn due to the concerns of foreign companies and governments—through which they require or otherwise promote the use of technologies with domestic intellectual property. Chinese laws and regulations also increasingly incorporate data localization requirements that may complicate the ability of multinational companies to transfer their data out of China. Policymakers are currently drafting regulations and national standards to establish a cross-border data transfer mechanism that will regulate cross-border data flows as required by the Cybersecurity Law. Moreover, many Chinese laws and regulations require entities with operations in China to provide vaguely defined "technical support" to Chinese public security authorities in the context of national security and criminal investigations.

Since 2011, national security reviews have become a feature of China's foreign investment approval process. Starting in that year, the Chinese government, led by the State Council and MOFCOM, has been putting into place a system for security reviews of foreign inbound mergers and acquisitions in which a foreign investor would gain actual control over certain types of Chinese targets (i.e., those related to

和国家标准，以建立跨境数据传输机制，根据《网络安全法》的要求，监管跨境数据流动。此外，中国许多法律法规要求在华经营的实体在国民安全和刑事调查的背景下，要向中国公安部门提供界定不清的“技术支持”。

自 2011 年以来，国家安全审查已成为中国外商投资审批程序的一大特色。从当年开始，中国政府（由国务院和商务部牵头）实施了一套针对外国投资者入境并购的安全审查制度，通过并购，外国投资者可能获得对特定类型中国企业的实际控制权（即：与敏感军事和国防事务相关企业，重要的农产品、能源和资源、基础设施、运输服务、关键技术、大型装备制造等企业）。虽然与美国外国投资委员会（CFIUS）对在美外国投资实施的安全审查类似，（实质和程序）却更为宽泛和模糊不清。

2015 年，国务院办公厅发布了适用于自贸区的《国家安全审查条例》，将这些规定扩大到并购之外的其他投资，包括绿地投资。同年颁布的《国家安全法》提出了总体要求：“国家建立国家安全审查和监管的制度和机制，对影响或者可能影响国家安全的外商投资、特定物项和关键技术、网络信息技术产品和服务、设计国家安全事项的建设项目，以及其他重大事项和活动，进行国家安全审查，有效预防和化解国家安全风险”（第五十九条）。为了进一步执行这一规定，各个政府部门正在发布适用于特定行业和产品细则。例如，《网络安全法》也要求可能影响国家安全的网络产品和服务的采购接受安全审查。这些安全审查要求的确切性质以及将如何在实践中实施仍不明确。

- 关于外国投资者管理的综合性法律的修订，继续征求社会意见。
- 让市场在对外投资方面发挥主导作用。

## 建议

### 对中国政府：

- 努力确保在促进其产业政策目标的同时，尽量减少对市场运行的影响，并消除针对外国投资者在产业政策和实施手段上所有直接和间接形式的区别对待。
- 进一步减少负面清单的市场准入限制，允许外国投资者在华享有如同中国投资者在美国投资所享受的投资自由。
- 确保国家安全相关的规定和限制仅限于基本安全范畴，避免将之用于促进实现产业政策目标。

sensitive military and national defense affairs, and important agricultural products, energy and resources, infrastructure, transportation services, critical technologies, and large equipment manufacturing). This system is similar, but broader and less clearly defined (substantively and procedurally) than the security reviews of foreign investment in the US conducted by the Committee on Foreign Investment in the United States.

In 2015, the State Council's General Office issued special national security review rules applicable in PFTZs expanding the coverage of the national security review system beyond mergers and acquisitions to include greenfield investments as well. The National Security Law promulgated that same year included an overarching provision mandating that: "The State shall establish institutions and mechanisms for national security review and regulation, conduct national security review of foreign investment, specific items and key technologies, network information technology products and services, construction projects, as well as other major events and activities that affect or may affect national security, so as to effectively prevent and resolve national security risks" (Article 59). To further implement the requirements of this provision, relevant government agencies may issue more detailed rules applicable to specific industries and products. For example, the Cybersecurity Law imposes security review requirements for the procurement of network products and services that might affect national security. The exact nature of these security review requirements and how they will be implemented in practice is still unclear.

## Recommendations

### *For the Chinese Government*

- **Work to ensure minimal disruption to the operation of market forces when promoting industrial policy goals, and eliminate all direct and indirect forms of discrimination against foreign investors in industrial policies and the tools used to implement them.**
- Further reduce the market access restrictions contained in the negative lists and allow foreign investors the same degree of investment freedom that Chinese investors enjoy when investing in the US. Ensure that national security-related rules and restrictions are narrowly tailored and not used to promote industrial policy objectives.
- Continue to solicit public opinion on the ongoing revisions to a comprehensive law on the management of foreign investment.
- Allow market forces to play the decisive role in outbound investment.



# Standards, Certification, and Conformity Assessment

## Introduction

**R**eform of the standardization system in China continued in 2017. After twice soliciting public opinion, modifying the proposed draft three times, and discussing the first edition (1988) for 20 months, the “Standardization Law of the People’s Republic of China” (Standardization Law) was enacted on November 4, 2017 by the Standing Committee of the 12th National People’s Congress. This revision has laid a solid legal foundation for China to strengthen its standardization system reform at all levels. AmCham China appreciates such legislative action.

There are many positive developments in the newly adopted Standardization Law, including the introduction of market-driven mechanisms and the shift from a mechanism guided solely by the government to one guided by coordination between the government and the market. The introduction of group standards, the unification of mandatory standards, and the reduction of recommended standards give equal participation rights to foreign-invested enterprises (FIEs). Similarly, these changes also increase conformity with international standards and loosen the constraints on companies caused by enterprise standards. AmCham China welcomes these legal provisions and hopes that these can be effectively promoted and implemented.

AmCham China also notes that further improvement of the Standardization Law could be made. Such need was evident in the failure to introduce the principles of international standard-setting outlined in the “Agreement on Technical Barriers to Trade” of the WTO (WTO/TBT). The Standardization Law has a negative impact in suppressing group standards in favor of industry standards, expanding the authority of local standards, allowing for distortions that may be caused by government subsidies, and failing to address copyright issues. AmCham China suggests that these issues be addressed.

In addition to the issuance of the Standardization Law, there are many promotional initiatives and activities for standardization reform in China in 2017. For example, the Standardization Administration of China (SAC), the National Development and Reform Commission (NDRC) and Ministry of Commerce (MOFCOM) jointly issued

the “Guiding Opinions on the Participation of Foreign-invested Enterprises in Standardization in China” (Guiding Opinions) on November 6, 2017. This specifically ensured equal participation by FIEs in standards development. Following the development of group standards by 39 pilot organizations, social groups are becoming increasingly active in setting group standards. Chinese enterprises and experts are participating in international standard development activities, including those of US-based civil international standard setting institutions, such as The Institute of Electrical and Electronics Engineers Standards Association (IEEE), ASTM International, Underwriters Laboratories (UL), and The American Society of Mechanical Engineers (ASME). The government’s promotion of standardization and public awareness of standardization are both increasing. AmCham China welcomes the emergence of these activities and continues to monitor their development. Our members are willing to actively participate in standards development.

## Recent Developments

### *Standardization System Reform*

In 2017, the most significant event in standardization system reform was the promulgation of the new Standardization Law effective January 1, 2018. This is the first revision of the law since it came into force in 1988. The focus of the revised law has been expanded from industrial products and engineering standards to the fields of agriculture, services, and social management. It unifies mandatory standards, narrows and optimizes recommended standards, establishes and gives legal status to social organization standards, and frees up enterprises’ standard management. In addition, the Guiding Opinions, jointly issued by the three ministries, also further clarified the principle of national treatment and the issue of equal participation for both domestic and FIEs in China’s standardization activities. As a result, China’s standardization reform and development has entered a new phase in which government-led and market-driven standard systems can coexist.

AmCham China believes that a market-driven standardization system and standardization reforms will facilitate China’s further adherence to the international standards development process. Our members urge China to increase

# 标准、认证和合格评定

## 引言

2017年，中国继续推进标准化体制改革。《中华人民共和国标准化法》（标准化法）经过20个月对初版（1988年）修订草案的三次公开征求意见和三次修改讨论，最终于2017年11月4日第十二届全国人民代表大会常务委员会会议上通过。这一修法举措为中国在各层面深化标准化体制改革夯实了法律基础。中国美国商会（商会）赞赏中国这一立法行动。

新通过的《标准化法》有许多积极进步，包括引入市场驱动机制，变单一政府主导机制为政府和市场分工主导与协调机制，推出团体标准，统一强制性标准，收缩推荐性标准，赋予非中资企业平等参与权，扩大跟国际标准接轨，松绑企业标准管理等。商会欢迎这些法律条款，并希望这些条文能够在新法实施中得以切实推进和落实。

商会也注意到，新通过的《标准化法》尚有继续改进的地方，表现在未引入世界贸易组织《技术性贸易壁垒协定》（WTO/TBT）有关国际标准制定原则，行业标准对团体标准可能产生的抑制，地方标准的扩权，政府资助可能引起的扭曲，没有引入标准版权保护问题等。商会希望这些问题能够得以解决。

除了《标准化法》的颁布，2017年，中国还有许多标准化改革的推进举措和活动。比如，中国国家标准化管理委员会、中国国家发展改革委员会和中国商务部于2017年11月6日联合印发的《外商投资企业参与我国标准化工作的指导意见》，具体落实外资企业平等参与制定标准的问题；在原来39家团体标准试点机构的基础上，越来越多的社会团体越来越积极地制定团体标准；越来越多的中国企业和专家参与国际标准活动，包括总部设在美国的民间国际标准制定机构如IEEE、ASTM、UL、ASME等的活动；政府对标准化的宣传推广和民众对标准化的认识不断提高；等等。商会欢迎这些活动的涌现，保持对其持续关注，也愿意积极建议、献策甚至参与其中。

## 最新进展

### 标准化体制改革

2017年，标准化体制改革最具分量的事件就是新的《标准化法》最终颁布并将于2018年开始执行。这是该法自1988年生效实施以来第一次修订。新法的关注焦点从原先的工业产品和工程标准扩大到农业、服务业和社会管理领域，统一强制性标准，收缩并优化推荐性标准，建立并赋予团体标准的法律地位，松绑企业标准管理。此外，三部委联合印发的《外商投资企业参与我国标准化工作的指导意见》也进一步明确了中国标准化活动中的内外资企业平等参与的国民待遇原则。由此，中国标准化改革和建设进入政府主导和市场驱动的标准体系并存的新时期。

商会相信，通过引入市场驱动的标准化体制，中国能够进一步与国际标准制定流程接轨。商会促请中国采用更多国际认可的标准，引进国际标准通行做法，做好跟国际标准的接轨，为所有遵守中国标准化体制的企业提供一个公平和非歧视的平等环境。

## 现存监管问题

### 标准化法

新的《标准化法》的许多条文体现出积极进展，主要表现在以下几个方面：

标准化活动全覆盖，覆盖面从原先的以工业标准化和工程标准化为主扩展到工业、农业和服务业甚至社会活动领域。

引入市场机制，推出团体标准。标准制定活动由原先的政府主导转向政府和市场协同主导，标准类别也由原先的四个类别增加到五个类别，即国家标准、行业标准、地方标准、团体标准和企业标准。

its adoption of internationally accepted standards and introduce international standard practices, to align with international standards, and provide a level playing field for all companies that seek to comply with China's standardization system without discrimination.

## Ongoing Regulatory Issues

### *Standardization Law*

Many articles of the new Standardization Law show positive developments, most notably in the areas listed below.

The law allows for full coverage of standardization activities. Coverage extends from industrial standardization and engineering standardization to industrial, agricultural and service industries. It has even been expanded to cover social activities.

A market mechanism and group standards have been introduced. Standards development has changed from an activity solely guided by the government into one guided by the coordination between the government and the market. The standard categories have also been increased from four categories to five categories: national standards, industry standards, local standards, group standards and enterprise standards.

- The legislation of a standardized inter-ministerial coordination mechanism to coordinate the formulation and implementation of standards has been undertaken.
- Compulsory standard setting and management has been unified and simplified. This represents a change from the previous three-level system (national, industry, and local) of mandatory standards development to a single national level management system.
- The scope of nationally recommended standards has been reduced from a large number of national standards for specific products to basic and universal standards on health, safety and environmental protection.
- To emphasize the importance of conforming to international standards, newly developed standards should give priority to the use of existing, globally recognized international standards and should encourage active participation in international standard-setting activities.
- Equal participation rights are to be given to FIEs participating in the standards development process to strengthen the principle of national treatment.
- The pilot implementation of the standard self-declaration system of enterprises obtained legal support and the declaration platform was broadened. Enterprises are able to choose declaration platforms and channels independently, and constraints on companies caused by the enterprise standards management system were loosened.
- The revised law introduced standard implementation responsibility, clarifying that the formulator of the standard will be mainly responsible for its implementation.

However, despite these positive developments, AmCham China also noticed there were still some negative aspects in the revised law, as evidenced by the following.

- Earlier industry standards have not been kept distinct from newer group standards. As previous industry standards were directed by the government and are already ingrained within the system, group standards development activities will be somewhat limited.
- The WTO/TBT principles and rules on the standard development process are not reflected in the new Standardization Law. In particular, the revised law does not cover a consensus process based on due process.
- The authority of local standards has been expanded, with the revised law allowing county-level governments to set local standards. This could lead to protectionist market barriers at the local level.
- The government is subsidizing standardization activities which can easily distort the normal needs of standards development, dilute the role of various stakeholders in the standards development process, and affect the needs of the participants in standards development.
- The revised law does not address standards copyright and their protection. Free publication of compulsory standards and free public recommendation standards can cause complications for standards copyright and protection.

### *Recognition and Adoption of International Standards and Due Process*

The new Standardization Law noted that China actively participates in international standardization activities and encourages integration with international standards. However, it does not introduce the principles of international standards development or the practice of due process. AmCham China continues to encourage China to adopt international standards. Furthermore, we urge China to adhere to the formulation principles of international standards development activities and apply due process when implementing the Standardization Law. Our members urge China, like all major industrialized nations that are WTO signatories, to use its WTO/TBT commitments as a basis for legal and policy standardization frameworks.

In order to remain consistent with international standards, the Chinese government should be attentive to the implementation of some components of the new Standardization Law. The WTO/TBT requires that standards developed by a country adhere to provisions in cases where international standards exist or their completion is imminent. International standards must be used in whole or in part as the basis for national or industrial standards, except where doing so would be ineffective or inappropriate. In addition, before adopting a standard, standardization institutions must allow a period of at least 60 days for the submission

- 标准化部际协调机制法制化，统筹标准制定和实施。
- 统一和简化强制性标准制定和管理，由原先的国家、行业和地方三级强制性标准统归到国家强制性标准的一级管理体制。
- 收缩国家推荐性标准涉及面，由原先大量制定面向具体产品的国家标准收缩到围绕安全、健康、环保等基础性、通用性标准为主。
- 强调与国际标准接轨，新的标准化活动要优先采用现有的全球公认的国际标准，鼓励积极参与国际标准制定活动。
- 境内非中资企业参与标准制定，从法律上赋予平等的参与权，强化国民待遇原则。
- 企业标准自我声明系统的先行试点获得了法律支持并且自我声明信息平台也由此得到了拓展。现在企业能自由选择平台和渠道进行自我声明公开，而此前企业管理标准系统对于企业的局限也得到了松绑。
- 新法引入标准实施责任，明确主要由标准实施主体负责。

但是，除了以上积极进展，商会也注意到新法依然存在一些消极性特点，表现在：

- 早前的行业标准与新推出的团体标准界限不清，由于行业标准是由政府主导且具有路径依赖优势，团体标准活动会受到一定程度的抑制。
- 未体现 WTO/TBT 关于标准制定流程的原则和规则，特别是没有涉及基于程序正义的协商一致流程。
- 地方标准获得扩张。新法下放地方标准的管辖层级，允许县一级政府制定地方标准。这容易把地方标准引向市场壁垒，为地方保护主义所利用。
- 政府资助标准化活动。这容易扭曲标准制定的正常需求，淡化标准制定流程中的利益相关方角色，弱化标准制定参与者的内在需求。
- 新法未提及版权的标准及其保护。而且明确免费公开强制性标准、推动免费公开推荐性标准，可能会引起版权标准及其保护的复杂化。

## 国际标准和程序正义的认可 and 采用

新的《标准化法》提到，中国积极推动参与国际标准化活动，鼓励跟国际标准接轨，但是，没有引入国际上通行的标准制定原则和程序正义的良好惯例。商会继续鼓励中国采取国际标准。此外，商会还促请中国在新通过的《标准化法》实施过程中遵守和采用国际标准及其制定原则和程序正义。商会成员促请中国和作为 WTO 成员国的主要工业国家一样，将其在 WTO/TBT 中的承诺作为标准化法律和政策框架的基础。

为了与国际标准保持一致，中国政府在新的《标准化法》的实施中有一些地方需要特别留意。WTO/TBT 要求一个国家制定的标准必须遵守已有或即将完成的标准。国家标准或行业标准必须基于国际标准的全部或部分，除非在无效或不适用的情况。另外，在批准一个标准之前，标准化机构须留出至少 60 天的时间，让其他世界贸易组织成员国境内利益相关方对标准草案提出意见。

目前，有很多国际标准得到了中国政府 and 各个行业的认可。在中国国家标准（GB，国标）中，大约有 75% 源自或采用了国际标准化组织（ISO）、国际电工技术委员会（IEC）和国际电信联盟（ITU）制定的标准，各类行业标准也大量采用国际标准。这些国际标准包括总部设在美国的标准机构制定的标准。与此同时，中国在 ISO、IEC、ITU、ASTM、ASME、UL、IEEE 等机构积极参与甚至主导相关标准制定工作。商会对此非常认可，希望在这个方向上看到更多的中国身影。

中国标准和国际标准若能保持一致，不但有利于中国制造走向世界，而且有助于“一带一路”倡议的实施。在华企业理解中国政府基于国情和市场的需要，在某些领域的标准的制定过程中需体现出中国特色。但是借鉴部分国际标准，并以此为基础制定独特的中国标准，造成了标准的混淆、重复，并且加大了实际执行过程中的难度。对于全球化的市场和产品，独特的中国标准不但对进口产品和技术设置了市场准入限制和贸易壁垒，也阻碍了中国产品和技术走向国际市场，影响中国企业的全球化进程。针对中国独特标准的产品的本地化设计和生产，将增加生产企业的生产时间。令受到影响的企业包括本土企业、外资企业，研发设计、生产制造等上、下游利益相关方。商会建议中国标准应该尽可能和国际标准接轨。若实在需要对某些标准做中国特色的调整，应该加强制定过程中的透明度，对外解释说明制定中国特色标准的必要性并听取国际专家



of comments on draft standards by interested parties within the territory of a WTO member.

China's government and its industries have increasingly embraced a number of international standards. About 75 percent of Chinese national standards (GB, guobiao) were derived or developed by adopting standards from the International Organization for Standardization (ISO), International Electrotechnical Commission (IEC), and the International Telecommunication Union (ITU). Various types of industry standards also extensively adopt international standards. Furthermore, China is an active participant in relevant standard-setting work in the ISO, IEC, ITU, ASTM, ASME, UL, IEEE and other agencies. AmCham China recognizes the country's role in these organizations and applauds its continued participation.

The consistence of China's standards with international standards will not only help internationalize the government's "Made in China" agenda, but it will also support the implementation of China's Belt and Road Initiative. Enterprises in China understand that the government will adapt the international standards development process to suit China's own conditions and market needs. However, this process of partially adopting international standards has created confusion, led to the duplication of standards, and made actual implementation more difficult. For globalized markets and products, unique Chinese standards not only restrict market access and trade barriers on imported products and technologies, they also impede the entry of Chinese products and technologies into the international market. This affects the globalization of Chinese enterprises. The localized design and production of products in line with China's unique standards will increase production time among producers. Such enterprises include domestic and foreign enterprises, as well as upstream and downstream stakeholders like manufacturing, research and development design bodies. AmCham China suggests that whenever possible the government should adopt international standards in lieu of creating separate standards. If, however, certain standards do require adjustment for the Chinese context, greater transparency should be provided during formulation and an explanation should be provided as to why standards with Chinese characteristics were needed. Furthermore, when adapting these standards, the Chinese government should consult the opinions of international experts and stakeholders. Moreover, Chinese regulators should work with international experts to ensure constituency in the interpretation and application of those standards.

### ***Recognition of Disciplined Standards Development Organizations (SDO) as International SDOs***

The new Standardization Law encourages the adoption of international standards, participation in international standardization activities, and integration with international standards. However, it has not integrated the principles of international standards development or the good practice of

due process. As a result, the adoption of recognition of international standards in this law could be seen as superficial, with continued adherence to the traditional practice of only recognizing ISO, IEC and ITU. In fact, given the globalization of China's economy, the recognition and acceptance of international standards by China's market has gone beyond ISO, IEC and ITU. From a practical standpoint, no government, individual, or group of SDOs can alone lead standards development for all technologies and their application in the global market.

It is essential that regulators consider all globally-recognized SDOs, including those that are private and US-based. AmCham China also encourages regulators to base their decision about adopting a standard on internationally-accepted principles of standards development and due process, including open participation, transparency, impartial voting rights, and consensus. In particular, the technical quality and market relevance of a standard, as accepted by users in the marketplace, should be given importance. In accepting these SDOs and following such principles for adopting standards, our members believe the Chinese government will not only improve its standardization system but also promote the competitiveness of Chinese technologies and products in the global marketplace.

AmCham China therefore strongly urges the Chinese government to broaden its official recognition of international SDOs beyond the ISO, IEC, and ITU to any organization that follows the WTO/TBT principles of transparency, openness, impartiality and consensus, relevance and effectiveness, coherence, and incorporation of developing country interests as detailed in WTO G/TBT/1/Rev. 8 Section IX. Our members are confident that private, US-based SDOs meet these qualifications and encourage the Chinese government to engage with and accept these SDOs on the same basis as it does with the ISO, IEC, and ITU.

### ***Participation of FIEs in Standards Development***

In 2017, two documents were issued by government authorities that relate directly to the promotion of FIE participation in China's standardization activities. The first was the "Notice of Several Proposals on Expanding Opening Up and Active Use of Foreign Capital" (Guofa [2017] No. 5) (Notice), issued by the State Council on January 17. The second was the "Guiding Opinions on the Participation of FIEs in Standardization Work in China" (National Standards Committee, [2017] No. 119). The former noted the fair participation of FIEs in China's standardization work, while the latter was issued as implementing measures for the Notice. Our members praise China for these efforts to include FIEs in standards development.

AmCham China is pleased to see that in the past few years, more TCs have been gradually opening up to allow the participation of personnel from FIEs. The Standards Committee's efforts in this aspect are very encouraging. We

和利益相关方的意见。另外，中国监管机构应当与国际专家合作，确保标准解释和应用的一致性。

### 对国际标准制定机构的认可

新的《标准化法》，虽然鼓励采用国际标准、参与国际标准化活动以及跟国际标准接轨，但是并未引入国际标准制定的原则和程序正义做法。这容易导致对国际标准的认可走向表面化，停留在一直以来仅认可 ISO、IEC 和 ITU 的传统做法上。事实上，随着中国经济的全球化深度和广度不断加强，中国市场对国际标准的认可和接受范围已经远远超越了 ISO、IEC 和 ITU。而且，从实践角度看，由于全球市场上的技术及其应用多不胜数，政府、个人或标准制定机构中的任何一方都无法独自承担全球市场上所有标准的制定任务。

因此，监管机构需要考虑接受所有现有的国际公认的标准制定机构，包括总部设在美国的民间标准制定机构。商会也鼓励监管机构决定是否采用一项标准时，还应当基于国际认可的标准制定原则和程序正义要求，包括开放参与、透明、公正投票权和协商共识，尤其应当考虑这一标准的技术品质和市场相关度，即市场上用户的接受程度。通过认可这些标准制定机构并遵循这些标准制定原则，商会会员企业相信，中国政府不仅能够改进自己的标准化体制，还能够提高中国技术和产品在国际市场上的竞争力。

商会促请中国正式放宽认可国际标准制定机构的范围，从 ISO、IEC 和 ITU 扩大至其他遵循世界贸易组织贸易技术壁垒协定规定的六大原则的所有标准制定组织，即“WTO/TBT/1/Rev.8”第 IX 节确立的包括透明、公开、公正与协商共识、相关性与有效性、协调性以及兼顾发展中国家利益这六大原则。商会相信那些总部设在美国的民间标准制定机构均符合上述资格要求，并促请中国政府像对待 ISO、IEC 和 ITU 一样认可并与这些标准制定机构合作。

### 外资企业参与标准制定

2017 年，中国政府有关部门出台了二份文件，与直接推进外商投资企业参与中国标准化活动相关。第一份是国务院于 1 月 17 日印发的《关于扩大对外开放积极利用外资若干措施的通知》（国发〔2017〕5 号），第二份是引言中提到的三部委于 11 月 6 日联合印发的《外商投资企业参与我国标准化工作的指导意见》（国标委综合联〔2017〕119 号）。前者提到了外资企业公平参与中国标准化工作的事宜，后者更是为贯彻落实《通知》而出台的。商会赞

赏中国这种让外资企业参与标准制定的努力。

商会非常高兴看到，越来越多的技术委员会（TC）在过去几年，逐步开放让外资企业人员参加，标准委在这方面作出的努力令人感到鼓舞。商会非常赞赏标准委的开放举措，并且希望看到将其更好地落地实施。

商会促请中国政府继续与所有利益相关方合作制定标准，从而确保所制定的标准在国内和国际获得广泛的认可和支持。商会深信，外资企业人员进一步参与中国标准的制定工作，能够充分地引进国外经验、最佳做法等，为中国标准的制定作出进一步的贡献。

### 团体标准

将过去政府主导的标准制定活动分散下放，让团体（协会、商会和其他团体）在标准制定过程中发挥主导作用，这是新《标准化法》取得的其中一项重大进展。继 2016 年，中国发布了关于团体标准化的国家标准《团体标准化第 1 部分：良好行为指南》，团体标准化的第二部分《团体标准化第 2 部分：良好行为评价要求》已完成。商会鼓励中国政府确立对团体标准化包容的规则。

商会赞赏中国政府允许行业参与标准制定的举措。但根据与国家标准委的沟通，“团体”似乎只限于民政部批准和管辖的合法的“团体”。所以，企业可能很难参与设立符合法律要求的贸易协会“团体”标准制定机构。

虽然标准制定机构名义上向所有相关方开放，但是，实力雄厚的参与者仍然有可能将竞争者排除在外从而占据主导地位。商会促请相关法规明确提出团体标准制定机构将向所有相关方开放并将遵循国际最佳实践的要求，以防止特殊利益团体滥用行业规则。未向所有相关方开放的团体标准制定机构也可能不符合《反垄断法》的规定。

团体标准与国家标准和行业标准共存，可能对市场产生不确定的影响。中国正在考虑通过“快速通道”程序将团体标准转换为国家标准和行业标准。为了防止出现低质量以及不符合国际最佳实践的标准机构（SDO）制定的标准，需要明确“快速通道”规则和流程并且予以妥善实施。

重要的是，团体标准属于自愿性标准范畴，会对贸易产生影响。所以，团体标准制定机构，特别是中央政府下属的标准制定机构，必须确保标准的制定、采用和运用方式不会给国际贸易制造不必要的障碍。鉴于中国中央政府负责监督地方政府和其他机构（如，团体）制定的标准，

appreciate these efforts to further open, but will continue to monitor how they will be implemented.

In line with this, AmCham China urges the government to continue engaging with all relevant stakeholders in developing standards to ensure that the resulting standards are widely accepted and supported both domestically and internationally. Our members would also emphasize that further participation by FIEs will bring foreign experience and best practices that can contribute to the formulation of China's standards.

### *Social Organization Standards*

One of the major developments in the revision of the Standardization Law is the decentralization of the government-driven standardization process to give associations (societies, chambers, and other consortia) a leadership role in the drafting process. The Chinese national standard "Social Organization Standardization – Part I: Guidelines for Good Practices" (GB/T20004.1-2016) was published in 2016, and the following standard titled "Social Organization Standardization – the draft of Part 2II: Requirements for the Evaluation of Good Practice" is also now complete. AmCham China encourages the Chinese government to establish rules that set a tone of inclusiveness for social organization standardization.

AmCham China was encouraged by the government's efforts to include industry in standards development. However, according to discussions with the SAC, it appears that the term "social organizations" is intended to be limited to legal bodies approved and regulated by the Ministry of Civil Affairs. As such, companies may find it difficult to set up a trade association "social organization" as an SDO that meets legal requirements.

Although an SDO is nominally open to all interested parties, there is a significant risk that it could be dominated by a powerful participant that takes steps to exclude competitors from participating. AmCham China urges that relevant regulations make clear that social organization SDOs be open to all parties and follow international best practices, in order to prevent special interest groups from abusing industry rules. A social organization SDO that is not open to all parties may be inconsistent with the Anti-Monopoly Law.

Social organization standards will also coexist with national standards and sector standards, which may have an uncertain impact on the market. A fast-track process is being contemplated as a means to convert social organization standards to national standards and sector standards. It is important that such fast track guidelines be clear and the process is well administered, so as to prevent low-quality standards or standards for SDOs that do not follow international best practices.

It is important to note that social organization standards constitute voluntary standards and can impact trade. As

such, institutions that set social organization standards, especially standardization bodies under the central government, must ensure that standards are not prepared, adopted, or applied in a way that creates unnecessary obstacles to international trade. AmCham China recommends that the central government encourage standards developers to align their practices with WTO/TBT provisions.

### *Enterprise Standards*

In recent years, enterprise standard management has changed from the former filing system to a self-declaration system. This has been gradually implemented at different levels of government and in different regions. The new Standardization Law codifies the self-declaration system and allows enterprises to choose between their own platforms or public ones for self-declaration. AmCham China welcomes the implementation of the "enterprise self-declaration system", as this allows enterprises, consumers, governments, and third-party agencies to participate in market surveillance. Such a measure helps market participants play a key role in the development of standards and optimizes the development process. The system simplifies processes, reduces administrative expenses, and increases efficiency.

However, there are still some ambiguities in the new Standardization Law regarding enterprise standards. Among the requirements of the "Open Enterprise Self-Declaration System", Article 27 of the revised law states that "the state shall implement social organization standards and an enterprise standards self-declaration system. Enterprises shall disclose the number and name of mandatory standards, recommended standards, social organization standards, or enterprise standards".

Enterprises implementing the enterprise standards that they have formulate should also disclose a functional index of products and services and a performance index of products. The government encourages that social organization standards and enterprises standards be disclosed to the public through a standards information public service platform. AmCham China welcomes the spirit of the amendment, as it gives enterprises the flexibility to disclose standards information to the public through the "standards information public service platform". Our members also hope for more clarification on the need for enterprises to implement an enterprise standards self-declaration system, if they choose not to make use of the "standards information public service platform" to disclose relevant enterprise standards.

In addition, the revised law requires that "enterprises which implement their own enterprise standards also open functional indicators of products and services and performance indicators of products". Moreover, Article 21 of the revised law stipulates that "the technical requirements of enterprise standards shall not be lower than the relevant technical requirements of the mandatory national standards". However, our members hold that the additional information

商会建议中央政府鼓励标准制定机构在实践过程中遵守 WTO/TBT 相关规定。

## 企业标准

近年来，企业标准管理由原先的备案制度改为自我声明制度，并分层级、分地区逐步展开。新的《标准化法》从法律上明确企业标准自我声明公开和监督制度，允许企业按照自愿原则选择自有或公共平台进行自我声明。商会欢迎中国实行“企业自我声明公开制度”，这一新制度使得企业、消费者、政府和第三方机构共同参与市场监管，有利于市场参与者发挥关键作用以及优化商业领域的标准化工作，有利于简化流程，减少行政支出和增加效率。

但是，针对企业标准，新的《标准化法》仍然存在个别不清晰的地方。有关“自我声明公开制度”的要求，在新法第二十七条提出“国家实行团体标准、企业标准自我声明公开和监督制度。企业应当公开其执行的强制性标准、推荐性标准、团体标准或者企业标准的编号和名称；企业执行自行制定的企业标准”。

执行企业标准化的企业还应当公开产品、服务的功能指标和产品的性能指标。政府鼓励团体标准、企业标准通过标准信息公共服务平台向社会公开。首先，商会欢迎有关修订的精神，把是否利用“标准信息公共服务平台”向社会公开的自主权交给企业，给予企业进一步的灵活性。同时，商会也希望能进一步澄清在企业选择不利用“标准信息公共服务平台”向社会公开有关企业标准时，企业需要如何实行企业标准自我声明公开和监督制度。

此外，新法要求“企业执行自行制定的企业标准的，还应当公开产品、服务的功能指标和产品的性能指标”。商会认为新法第二十一条已规定“企业标准的技术要求不得低于强制性国家标准的相关技术要求”，作为企业标准，在满足第二十一条的前提下，由于额外的信息公开可能会涉及到企业的商业秘密、商会认为企业选择公开多少、或种类的“产品、服务的功能指标和产品的性能指标”应为自愿性质。希望此原则在后续沟通中能得到澄清。

目前，有相当一部分国家标准是参考国际标准制定的，企业目前遇到的问题是在国际标准更新时，相应国家标准的更新经常出现滞后情况。因此，部分企业选择利用企业标准作为衔接工具，以便在满足过时国家标准的同时，能够更好地体现最新的市场标准。而这部分工作理论上能够避免的。所以，商会希望后续对于参考国际标准制定的

国家标准能够随着相应国际标准更新的时间，能更及时地作出更新和修订，以便减低企业这方面的额外行政工作。

## 继续深化中国检测检验认证制度改革

中国将检验检测认证确定为重点发展的生产性服务业、高技术服务业、科技服务业，《中国制造 2025》《装备制造标准化和质量提升规划》《消费品标准和质量提升规划》都将认证认可列为重要举措，提出要“完善认证认可管理模式，提高强制性产品认证（“3C 认证”）的有效性，推动自愿性产品认证健康发展”。

《认证认可检验检测发展“十三五”规划》及行动计划也提出，“以提高发展质量和效益为中心，以服务供给侧结构性改革为主线，围绕建设认证认可强国目标，全面开展质量提升行动，严守安全底线，拉升质量高线，加强全面质量管理”。商会欢迎中国实施检测检验认证制度改革，切实深化“放管服”，精简优化强制性、准人类制度，公开各项国家统一推行认证制度的目录和准入条件，这将有助于提高中国制造产品的质量，进一步推动中美贸易。商会也促请中国采用检测检验认证的最佳国际实践作法，将规则制定者、仲裁人和利益相关方的角色分开，从而有效地解除现代服务业的禁锢，让市场发挥主导作用，为生产厂商提供更多选择去满足中国市场相关检测检验认证要求。

商会相信，为了深化检测检验认证制度改革，还需要采取其他切实有效的措施，包括允许外资检测机构为所有产品类别提供 3C 检测认证服务，允许外资机构成为 3C 认证机构。由此，所有利益相关方才能共同参与建设一个公平、健全的检测检验认证制度。

## 建议

### 对中国政府：

- 正式将对国际标准制定机构的认可范围扩大至其他遵循 WTO/TBT 关于国际标准制定原则的标准制定机构。
- 明确团体标准制定的规则和要求，遵循公开、透明和协商一致的国际通行做法，防止特殊利益团体滥用规则。

disclosure needed to meet the requirements of Article 21 may involve releasing enterprises' business secrets. As such, AmCham China urges that the disclosure of the number and type of both functional indicators of products and services and performance indicators of products should be made voluntary. We hope this principle can be clarified after further meetings with relevant government regulators.

At present, a considerable number of national standards are being formulated in reference to international standards. The problem currently encountered by enterprises is that when international standards are updated, corresponding national standards usually lag behind. As a result, some enterprises choose to use enterprise standards to reflect the latest market standards, while meeting obsolete national standards. Such dual standards can in theory be avoided. We hope that the subsequent national standards based on international standards can be updated and revised as corresponding international standards are updated. This will reduce the extra administrative work of enterprises.

### *Continued Reform on Testing, Inspection and Certification (TIC)*

China defines the TIC industry as manufacturing, high-tech and technology services with priority in development. "Made in China 2025", "Standardization and Quality Upgrading Plan for Equipment Manufacturing Industry", and "Consumer Products' Standards and Quality Improvement Plan" each set out certification and accreditation as important measures, setting forth a need to "improve the certification and accreditation management model, improve the validity of compulsory product certification ("3C certification"), and promote the healthy development of voluntary product certification".

The "TIC Industry Development 13th Five-Year Plan" and its associated action plan also call for "improving quality and efficiency, serving supply-side structural reform, centering on the goal of building a powerful certification and accreditation country, conducting overall quality promotion, strictly observing security, raising the quality, and strengthening total quality management". These goals are welcomed by AmCham China but are contingent upon China adopting international best practices. Our members are also encouraged by China's TIC reform efforts to "streamline administration and delegate power", strengthen regulation, optimize services, improve both compulsory and market access systems, and disclose the catalogs and access conditions in order to uniformly implement the certification systems. These measures will improve the quality of products made in China and further facilitate trade between China and the US. AmCham China also urges China to adopt the international TIC best practice of separating the rule makers, referees, and players, as this is an effective way to give greater freedom to the modern service industry and let the market take the lead. Additionally, it provides more alternatives for manufacturers to comply with related testing and certification requirements in the Chinese market.

AmCham China believes, however, that additional concrete steps need to be taken to strengthen TIC reforms, including allowing foreign-invested testing organizations to perform 3C certification testing for all product categories and enabling foreign-invested organizations to qualify as certification organizations for 3C certification. In this way, all stakeholders can participate in building a fair and sound TIC system.

## Recommendations

### *For the Chinese Government:*

- **Officially broaden recognition of international SDOs to include any organization that follows the WTO/TBT principles on international standards development.**
- Provide a clear set of rules and requirements in the development of social organization standards, and follow an open, transparent and consensual international practice to prevent abuse by groups with special interests.
- Adopt existing global technical standards in their complete form whenever available, in order to ensure full harmonization and avoid creating duplicate national standards or standards deviating from prevailing global standards. Moreover, when adopting international standards, Chinese regulatory agencies should work with relevant industries and subject experts to ensure that international standards adopted are properly interpreted and applied.
- Under the regulations of new Standardization Law and Guiding Opinions, monitor the activities of TC and subcommittee-level standards working groups more closely to ensure that FIEs are allowed to participate in all phases of standards-development activities on an equal basis with domestically-invested enterprises.
- Pay more attention to the protection of standard copyrights as the new Standardization Law clarifies that mandatory standards should be published without charge and encourages the free disclosure of some recommended standards.

- 尽可能完整采用现有的国际技术标准，避免制定重复的国家标准或者偏离现有国际标准的标准。并且，在采用国际标准时，中国监管机构应当与相关行业和学科专家合作，确保对采用的国际标准做出适当的解释和应用。
- 在新的《标准化法》和《外商投资企业参与我国标准化工作的指导意见》的法规下，更加密切地监督各技术委员会和技术分委会及其标准工作组的活动，确保外资企业能够与内资企业平等地全程参与标准制定活动。
- 鉴于新的《标准化法》明确强制性标准免费公开并鼓励部分推荐性标准的免费公开，中国需要更加注重标准版权的保护。

# Tax Policy

## Introduction

China's efforts towards localizing the Base Erosion and Profit Sharing (BEPS) action plans of the Organisation for Economic Cooperation and Development (OECD) reached a new height in 2017. China released a new comprehensive tax regulation to further combat international tax avoidance through transfer pricing. The country also took various measures in 2017 to simplify the tax compliance process and reduce the tax burden on taxpayers. These include the abolishment of the 13 percent VAT category for taxpayers, the nationwide expansion of the advanced technology service enterprise regime, the additional guidance on R&D super deduction policies, and the clarification of tax computation and withholding rules in cross-border transactions. Meanwhile, the State Administration of Taxation (SAT) also pushed forward with other reform initiatives in the areas of consumption and resource tax.

The SAT's general policy trend continues to be the promotion of innovation through tax incentives and the enforcement of the BEPS's local mandates in China through intense audits. During 2017 there were a number of tax investigations involving large US multinational companies, often in relation to transfer pricing. Aggressive audit adjustments were delivered to taxpayers during tax examinations and negotiations. US companies need to maintain documentation diligently in order to prepare for such tax challenges.

## Environment of Taxation Administration

China's laws and regulations on tax and trade are complicated and constantly changing. Tax practice and implementation also vary by location. In addition, the regulations of various authorities, including the SAT, General Administration of Customs (GAC) and Ministry of Commerce (MOFCOM) have not been updated to correspond to the new economic models and arrangements set in place during business operations. The regulations of various authorities are sometimes unclear, and it is difficult for taxpayers to meet the requirements of all authorities.

There are various forms of tax inspections, such as tax audits, self-assessments, and risk-warning letters. For example, the subsidiaries of one member company in a specific prov-

ince underwent several tax inspections in different forms throughout 2017 until October. Some tax inspections are protracted and even last for years, causing enterprises great inconvenience. As for items which are not explicitly stipulated in tax regulations, tax authorities are biased toward interpretations that are unfavorable to taxpayers. AmCham China hopes that the tax authorities can work towards supporting taxpayers, and that tax officials at all levels place more trust in taxpayers in tax matters.

## Recent Developments

### *New Regulation on Transfer Pricing Adjustment and Audit*

Perhaps the most important tax regulation issued by SAT in 2017 is the "Bulletin on the Administrative Measures for Special Tax Investigation and Adjustments and Mutual Agreement Procedure" (Bulletin 6). Bulletin 6 is the third and final bulletin in a series by which the SAT comprehensively revised the transfer pricing regime under the former Circular 2. After Bulletin 6 took effect on 1 May 2017, the revamp of China's transfer pricing regime was complete. Some of the key mandates of Bulletin 6 include the following:

- Bulletin 6 officially confirms SAT's past positions on transfer pricing issues in response to the BEPS project. It clearly states that the tax authorities are only allowed to use transfer pricing methods that conform with the arm's length principle if they wish to make a transfer pricing adjustment. Further, transfer pricing adjustments to inter-company payments are also subject to an arm's length test.
- Bulletin 6 requires value contribution analysis when determining the allocation of returns to intangibles. The key factors in the value contribution analysis include the functions of development, enhancement, maintenance, protection and exploitation (DEMPE) as proposed under the BEPS Actions 8-10 final report, but marketing or promotion is introduced as a new value-contributing factor.
- Bulletin 6 further provides that a legal owner that does not contribute to value creation should not receive any intangible-related return. More specifically, it states

# 税收政策

## 引言

**中** 国为实现经济合作与发展组织（OECD）的税基侵蚀和利润分成（BEPS）行动计划的本地化努力在 2017 年达到了新高度。中国发布了新的综合税收法规，通过转让定价进一步打击国际避税。中国在 2017 年也采取了各种措施来简化税务合规程序，减轻纳税人的税收负担。其中包括取消纳税人 13% 的增值税类别，全国范围内扩大先进技术服务企业制度，增加对研发超额抵扣政策的指导，明确跨境交易税收计算和扣缴规则。与此同时，国家税务总局也在推进消费税和资源税领域的其他改革举措。

国家税务总局的总体政策趋势仍然是通过税收优惠促进创新，并通过密集审计执行 BEPS 在中国的当地规定。2017 年期间，涉及美国大型跨国公司的一些税务调查往往涉及转让定价。在税务检查和谈判中，对纳税人进行了积极的审计调整。美国企业需要努力维护文件，以便为此类税收挑战做好准备。

## 税收环境

中国税收及贸易的相关法律法规比较复杂且不断变化，不同地区具体执行的规则和实施方法也存在差异。同时，对于业务中出现的新的经济模式与安排，各个机关（比如国家税务总局、海关总署、商务部）缺乏与时俱进的配套法规，不同部门的规章制度有时不明确，导致纳税人难以同时满足所有机关的要求。

各种形式的税务检查，如稽查、自查、风险提示函等名目众多，比如某公司 2017 年内截至 10 月在某省的几个子公司收到数个不同形式的税务检查通知。有的税务检查旷日持久甚至跨年，给企业带来繁重的负担。对于税收法规中没有给予明确规定的事项，偏向不利于纳税人的方向解释。中国美国商会（商会）希望税务机关的工作能够更

加便利纳税人，各级税务人员能够本着信任纳税人的态度办理税务事项。

## 最新进展

### 转让定价调整和审计新规

国家税务总局 2017 年颁布的最重要的税收法规是《“特别税务调查调整及相互协商程序管理办法”》（6 号公告）。6 号公告是国家税务总局根据之前的 2 号文全面修订转让定价制度的系列文件中的第 3 次也是最后一次公告。6 号公告于 2017 年 5 月 1 日生效后，中国转让定价制度改革完成。6 号公告的一些重点要求如下：

- 6 号公告正式确认了国家税务总局过去对转让定价问题的立场，以回应 BEPS 项目。它明确指出，如果税务机关希望进行转移定价调整，则只允许使用公平交易原则的转让定价方法。此外，对公司间支付的转移定价调整也需要经过公平交易测试。
- 6 号公告要求在确定无形资产回报的分配时进行价值贡献分析。价值贡献分析的关键因素包括 BEPS 行动 8-10 最终报告中提出的开发、增强、维护、保护和利用（DEMPE）功能，但推广或促销被引入作为一种新的价值贡献因素。
- 6 号公告进一步规定，对创造价值没有贡献的法定所有人不应收到任何与无形资产有关的回报。更具体地说，它指出一家只为无形资产开发提供资金而不履行相关职能或承担相关风险的资本雄厚的公司无权获得与无形资产有关的回报。
- 6 号公告要求可比性分析考虑另外两个因素：第一，企业履行合同的能力，履行合同的实际行为以及订立合同条款的相关方的“信誉”程度；其次，区位特定优势（LSA），如选址节约和市场溢价。这些因素被中国税务机关广泛用于转让定价调整。



that a capital-rich company that only provides funds to intangible property development without performing relevant functions or assuming relevant risks is not entitled to intangible-related returns.

- Bulletin 6 requires comparability analysis to consider two additional factors: first, the enterprise's ability to perform the contracts, its actual conduct of performing the contracts, and the degree of "credibility" of the related parties entering into the contract provisions; and second, the location specific advantages (LSAs), such as location saving and market premium. These factors are heavily used by Chinese tax authorities in making transfer pricing adjustments

Multinational corporations (MNCs) welcome the confirmation in Bulletin 6 that tax authorities must comply with the arm's length principle in transfer pricing matters. Some of the former rules circulated by SAT were vague and seemed to depart from the arm's length principle. However, Bulletin 6 clarifies the SAT's position in this regard and to a large extent addresses taxpayers' concerns. The arm's length principle, while still subject to interpretation, sets a boundary for the tax authorities to make transfer pricing adjustments. MNCs whose transfer pricing policies are supported by quality comparable data should have a strong legal basis to defend their strategies based on this principle.

However, in practice, our members have reported numerous cases where the local tax authorities and taxpayers took dramatically different views of arm's length standard. The existing Advance Pricing Arrangement (APA) regime was often difficult to access, making it hard to provide taxpayers the tax certainty required.

### Aggressive Transfer Pricing and Auditing

In recent years, the SAT has participated in international anti-tax avoidance regarding BEPS. A series of transfer pricing audits are being carried out on MNCs. As part of this, the SAT is expected to identify unique business models and avoid rejecting MNC's tax planning structures. We also recommend that a consensus be reached between SAT and enterprises to lower the tax burden, limit tax uncertainty and boost the confidence of MNCs to invest in China.

### **Update on Value-Added Tax Reform**

China's VAT reform made effective for all sectors in May 2016 has yielded positive results for businesses in the service sectors. In order to improve the VAT regime, AmCham China offers the following recommendations.

### Further Simplification of VAT Rates

Based on Caishui (2017) No. 37 (Circular 37), the VAT brackets were reduced from four to three as of July 1, 2017, and the 13 percent rate was removed. The 11 percent VAT

rate is applicable to the sale or import of agricultural products (including grain), tap water, heating and other items originally covered by the 13 percent rate. Even with the removal of the 13 percent VAT rate, China's VAT system still has three different VAT rates (6, 11 and 17 percent) and two levy rates (3 and 5 percent).

The application of multiple VAT rates increases the complexity of tax management for businesses and may lead to an economy-wide distortion of consumer behavior. In view of the enactment of a VAT law, it is recommended that Chinese policy-makers further reduce the number of VAT rates to follow international best practice for VAT regimes.

### More Favorable Concessions for Cross-border Services

The VAT regulations exempt most cross-border services from VAT, and apply zero rates to only a few of them, including offshore outsourcing, R&D, and broadcasting services. This means that VAT is effectively provided by the domestic supplier via their inputs. Moreover, the procedure for claiming a zero rating is very complex and burdensome.

We recommend that policymakers further apply the zero rating concession to more cross-border services and simplify the approval process accordingly, in order to allow more industry players to enjoy the concession as set out in the regulations.

### Challenges Faced by Foreign Financial Institutions

The VAT rules for financial services do not fully address the particularities of foreign financial institutions' businesses and operations. For example, in cases where a foreign investor purchases commercial bonds issued domestically and receives interest income from the Chinese issuer, VAT is applicable. As the investor is located outside China, the Chinese issuer has to withhold VAT on its behalf. However, in most cases, the Chinese issuer is unable to identify the bond holder and withhold the VAT accordingly.

We recommend that policymakers take foreign financial institutions' operations into consideration when issuing new rules for the financial service sector to ensure consistency in the application of the rules by foreign financial institutions.

### **New GAAP Impact to China Tax Filing**

In 2017, the Ministry of Finance made efforts to revise PRC GAAP, including GAAP No. 14 (Revenue), GAAP No. 16 (Government Grants), GAAP No. 22 (Recognition and Measurement of Financial Instruments), GAAP No. 23 (Transfer of Financial Assets), and GAAP No. 24 (Hedge Accounting). Among these revisions, the one with the strongest material influence on tax filing is revised GAAP No. 14 (Revenue; New Revenue GAAP). New Revenue GAAP came into effect on January 1, 2018 and will gradually be adopted by different types of corporations.

跨国公司欢迎6号公告确认的，税务机关在转让定价事宜上必须遵守公平交易原则。国家税务总局之前发布的一些规则不明确，似乎偏离了公平交易原则。然而，6号公告明确了国税总局在这方面的立场，并在很大程度上解决了纳税人的担忧。公平原则尽管仍有待解释，但为税务机关制定了转移定价调整的界限。跨国公司的转让定价政策得到了质量可比数据的支持，它们应该有一个强有力的法律基础来根据这一原则为自己的战略辩护。

然而，实际上，商会会员报告了很多当地税务机关和纳税人对公平交易标准的看法截然不同的案例。现行的预先定价安排（APA）制度通常难以获得，因此难以向纳税人提供所需的税收确定性。

### **激进 TP 和审计美国在华企业税收不确定性**

近年来，中国税务机关积极参与针对税基侵蚀和利润转移（BEPS）的国际反避税行动，对跨国公司开展了一系列转移定价稽查。希望税务机关在稽查中能够更加充分识别和认可一些独特的商业模式，避免激进地否定跨国公司税收筹划架构，商会也建议在税企之间达成一致意见，降低企业税务成本，控制税务不确定性，提振在华投资信心。

### **关于增值税改革的最新情况**

中国的增值税改革在2016年5月对所有行业生效，为服务业企业带来了积极成果。为了改善增值税制度，商会提出以下建议。

#### **进一步简化增值税税率**

根据财税（2017）37号（37号文），截至2017年7月1日，增值税类别从4个减至3个，13%的税率被取消。11%的增值税税率适用于销售或进口农产品（包括谷物），自来水，取暖和其他最初由13%税率所覆盖的产品。即使取消13%的增值税税率，中国的增值税制度仍然有三种不同的增值税税率（6%、11%和17%）和两个税率（3%和5%）。

多重增值税税率的应用增加了企业税收管理的复杂性，并可能导致整个经济范围内对消费者行为的扭曲。鉴于增值税税法的颁布，建议中国政策制定者进一步降低增值税税率，以遵循国际增值税体系的最佳实践。

#### **更有利于跨境服务的优惠**

增值税规定免除了大多数跨境服务的增值税，并将零税率应用于其中的少数，包括离岸外包、研发和广播服务。

这意味着增值税实际上是由国内供应商在其投入中提供的。此外，申请零税率的程序非常复杂和繁琐。

商会建议政策制定者进一步将零税率特许权适用于更多的跨境服务，并相应简化审批流程，以便让更多的行业参与者享受法规规定的特许权。

### **外国金融机构面临的挑战**

金融服务的增值税规定并未完全解决外国金融机构业务和运营的特殊性。例如，增值税适用于外国投资者购买国内发行的商业债券并从中国发行人收取利息收入。由于投资者位于中国境外，中国发行人必须代表投资者代扣增值税。然而，在大多数情况下，中国发行人无法确定债券持有人并相应扣缴增值税。

商会建议政策制定者在颁布金融服务行业新规时考虑到外国金融机构的运营，以确保外国金融机构适用规则的一致性。

### **企业会计准则修订对纳税的影响**

2017年，财政部对现行会计准则进行了集中修订，包括《企业会计准则第14号—收入》、《企业会计准则第16号—政府补助》、《企业会计准则第22号—金融工具确认和计量》、《企业会计准则第23号—金融资产转移》和《企业会计准则第24号—套期会计》等。其中，变化较大且可能对税收产生重大影响的是修订后的《企业会计准则第14号—收入》（以下简称“新收入准则”）。新收入准则于2018年1月1日起针对不同类型企业陆续开始实施。

新收入准则要求企业应用“控制权转移”原则替代原来的“风险报酬转移”原则确定收入确认的时间和金额。根据新收入准则的要求，收入应在企业将商品或服务的控制权转移给客户的时点（或过程中）以其预计有权获得的金额予以确认。该变化可能对企业如何以及何时确认收入产生重大的影响，要求企业做出新的估计和判断，并且导致收入确认的进程可能加快或延迟。

现行中国企业所得税法对企业所得税收入确认在很大程度上借鉴了原会计准则中关于收入确认的原则，即“风险报酬转移”原则。如果企业所得税法中的收入确认原则保持不变，则新会计准则的执行将导致企业在企业所得税收入确认方面出现越来越多的差异以及不确定性。

基于这些理由，商会促请财政部和国家税务总局评估实施新收入公认会计准则对企业的企业所得税申报的影响，

As required by New Revenue GAAP, enterprises should recognize revenue at the moment of “transfer of control” instead of “transfer of risks and compensation.” New Revenue GAAP also specifies that revenue from sale of goods or services should be recognized in the amount the enterprise is expected to have the right to collect by the time (or in the process) of the transfer of control over goods or services to the buyer. This revision would have a material influence on how and when an enterprise should recognize revenue, so requiring the enterprise to make new estimates and judgments in accounting. This revision may accelerate or postpone the process of revenue recognition in different enterprises.

Nevertheless, the prevailing Enterprise Income Tax Law has followed the revenue recognition standard in the old PRC GAAP, namely revenue recognition by the time of “transfer of risks and compensation.” If the revenue recognition standard remains unchanged in the Enterprise Income Tax Law, the implementation of New Revenue GAAP would lead to greater differences in revenue recognition between accounting and tax, as well as to greater uncertainty in Corporate Income Tax (CIT) filing.

On these grounds, AmCham China urges the Ministry of Finance and the State Tax Administration to evaluate the influence on enterprises’ CIT filings exerted by the implementation of New Revenue GAAP, and to take action to update the revenue recognition principle in the Enterprise Income Tax Law in order to accommodate New Revenue GAAP and help taxpayers to reduce tax compliance risks.

## *Domestic Tax Regimes*

### *Compliance Requirements for Financial Institutions (FIs): Measures on Common Reporting Standards*

On May 19, 2017, six ministries including the MOF, SAT and related financial regulatory bodies jointly issued the final “Administrative Measures on the Due Diligence Procedures for Non-Residents’ Financial Account Information in Tax Matters” (Measures), marking the official introduction of the Common Reporting Standards (CRS) rules to China. The Measures postponed the date of effectiveness from January 1, 2017 to July 1, 2017 and are generally consistent with the draft rules, except in the following aspects:

- Denominating the aggregate balance of financial accounts in USD.
- Defining the method of converting non-USD currencies into USD when calculating the accounts balance.
- Adjusting the deadlines for CRS due-diligence.
- Requiring financial institutions (FI) to register for CRS by 31 December 2017 on SAT website.
- Specifying legal liabilities of noncompliance with CRS.

The SAT is working with other relevant regulatory bodies on the guidelines for reporting information in relation to CRS.

Due to variation in business models, management processes, size and types of the clients, FIs are misaligned when conducting CRS due-diligence with only the relatively general rules and procedures regulated in the final Measures. Only the detailed implementation rules for banks have been promulgated to date. Our members urge the SAT to issue detailed rules on CRS compliance for other financial sectors (e.g., insurers, funds and trusts) by communicating with the corresponding industry associations, so as to effectively guide FIs to implement CRS.

### *Strengthening Cooperation among Governmental Agencies*

AmCham China urges the SAT and GAC to strengthen communication and cooperation. In some cases, customs levies import VAT on royalty fees by adding the fee to the price of the imported goods. However, the tax authority also requires enterprises to withhold income tax and VAT in the process of service trade cross-border payments. Our members urge the SAT and GAC to work together on this issue, in order to avoid double taxation on enterprises.

Our members also urge the SAT and State Administration of Foreign Exchange to strengthen communication and cooperation. With regard to cross-border payments on labor service fees provided in China by non-tax residents’ dispatched personnel, some local tax authorities defer issuing the Taxation Record Filing Form for External Payment to the applicant enterprise. This has resulted in the applicant enterprises failing to complete cross-border payments. However, SAFE stipulates that for cross-border payment of advanced and allocated expenses under service trade by domestic and foreign organizations which have an affiliated relationship, the advanced payment or allocated period may not exceed 12 months. AmCham China urges the SAT and SAFE to consider this issue and implement a solution to avoid unwarranted rejection of cross-border payment applications.

AmCham China also encourages SAT and MOF to improve communication and cooperation. MOF issued the “Circular of the MOF on Revising and Issuing the Accounting Standards for Business Enterprises No.14 – Revenues” (Cai Kuai (2017) No.22) on July 5, 2017. This new circular has significantly impacted the most important accounting factor for revenue. The revision may also challenge VAT and corporate tax calculation and filings. It also widens the gap between the accounting standards and the revenue recognition requirements of tax law with regard to timing, amounts, measurements, and other issues. Our members urge the SAT and MOF to enhance communication and cooperation, and instruct taxpayers how to recognize book-tax difference, complete tax reconciliation and ensure tax compliance.

并采取行动更新企业所得税法中的收入确认原则以适应新收入公认会计准则并帮助纳税人降低税务合规风险。

## 国内税收制度

### 对金融机构的合规要求：关于通用报告准则（CRS）的管理办法

2017年5月19日，财政部、国家税务总局及金融监管机构联合发布了正式的《非居民金融账户涉税信息尽职调查管理办法》（“管理办法”），标志着国际通用报告准则在中国正式落地。管理办法将CRS合规的实施日期由2017年1月1日推迟至2017年7月1日。除以下有关规定外，管理办法中的其他主要合规管理要求与征求意见稿基本一致：

- 明确采用美元单位计算金融账户加总余额。
- 确定非美元货币折算为美元的具体方法。
- 调整尽职调查时间节点。
- 要求金融机构应于2017年12月31日前在国家税务总局网站办理CRS申报注册。
- 明确对金融机构违规行为所采取的措施。

国家税务总局正与其他相关监管机构合作，制定与CRS相关的信息报告指南。

由于不同金融机构在业务模式、管理流程、客户体量及客户群体方面各有特点，而最终办法中提出的尽职调查规定的规则和流程相对宽泛，导致不同金融机构执行CRS合规的程度仍然不一。目前，仅有银行业的尽职调查细则已发布。基于此，商会提请国家税务总局考虑与其他不同行业协会沟通协商，为其他行业（例如：保险、基金、信托等）也出台CRS尽职调查实施细则，有效地指导各类金融机构开展CRS尽职调查工作。

### 加强政府机构间的合作

商会提请国家税务总局与海关总署加强沟通合作。例如某些情况下的特许权使用费，目前海关在进口环节将其并入完税价格征收进口环节增值税，与此同时，税务机关要求在企业对特许权使用费按照服务贸易跨境对外支付流程，代扣代缴预提所得税和增值税。商会提请海关总署与国家税务总局针对此能够达成一致，以避免对企业造成潜在双重征税，

商会会员提请税务机关与外汇管理机关加强沟通合作。例如在非居民派遣人员提供劳务支出的对外付汇的有关问题上，目前有些基层税务机关拖延向拟付汇企业出具服务贸易对外支付税务备案表，造成企业长期挂账，无法完成对外付汇。与此同时，外汇管理局要求具有关联关系的境内外机构代垫或分摊的服务贸易费用，代垫或分摊期限不得超过12个月。商会请税务机关与外汇管理局考虑这一问题并制定解决方案，以避免造成企业的对外支付申请无法完成。

商会提请税务机关与财政部门加强沟通合作。例如财政部于2017年7月5日发布的关于修订印发《企业会计准则第14号—收入》的通知（财会〔2017〕22号），对企业最为重要的财务指标—即收入带来重大变化和影响，同时可能也对企业增值税和企业所得税的处理带来挑战。本次修订有可能进一步扩大会计准则与税法上的收入确认时点、金额、条件等的差异。商会会员建议两部门之间加强沟通合作，指导纳税人识别税会差异、纳税调整、保证合规申报。

## 国际税收制度

### 《BEPS 多边公约》修改税收协定

2017年6月7日，来自包括中国在内的68个国家参加了经合组织《实施税收协定相关措施以防止税基侵蚀和利润转移（BEPS）的多边公约》（MLI）的签字仪式。首批协定的修订预计将于2018年生效。经合组织估计未来将有超过1,100多个税收协定受到公约的影响。但值得注意的是，美国作为中国最大的贸易伙伴，并没有参加此次的签字仪式，也尚未表达其签署意向。

《BEPS 多边公约》是第一份此类多边协议，旨在实现防止协定滥用、解决人为规避常设机构构成问题、消除混合错配影响、改进争议解决机制等多重目标，构建稳定有效的全球税收体系。

《BEPS 多边公约》将使签约国能够修改多个条约并实施属于BEPS项目的税收协定相关措施，而无需重新谈判每个条约。

公约要求签约国须执行四项BEPS最低标准中的两项，但同时也赋予了签约国在满足这些标准方面的一些弹性。此外，经合组织也提供了其他许多BEPS相关的措施建议，签约国可以自行选择是否施行。

公约只能在公约双方同意的情况下修改。《BEPS 多

The Measures also require that FIs carry out due diligence by following the specific procedures and timelines below:

办法还要求金融机构按照以下具体程序和时间表进行尽职调查：

Type of account 账户类别		Description 描述	Due diligence procedure 尽职调查程序	Timeline 时间要求	
Individuals 个人	New 新开	Opened on or after 1 July 2017 2017年7月1日以后开立	Obtain self-certification from account holder and make reasonable review of certification 声明文件+ 合理性审核	Beginning 1 July 2017 2017年7月1日开始	
	Pre-existing 存量	Low value accounts 低净值	Aggregate account balance on 30 June 2017 does not exceed US \$1 million 截至2017年6月30日账户加总余额不超过100万美元	Perform electronic search of information maintained by FI 检索留存资料（电子）	By 31 December 2018 2018年12月31日前完成
		High value accounts 高净值	Aggregate account balance on 30 June 2017 exceeds US \$1 million 截至2017年6月30日账户加总余额超过100万美元	Perform electronic and paper record search of information maintained by FI and request that customer managers identify their residence status 检索留存资料（电子+ 纸质）+ 询问客户经理	By 31 December 2017 2017年12月31日前完成
Entities 机构	New 新开	Opened on or after 1 July 2017 2017年7月1日以后开立	Obtain self-certification from account holder and make reasonable review of certification 声明文件+ 合理性审核	Beginning on 1 July 2017 2017年7月1日开始	
	Pre-existing 存量	De minimis 小额	Aggregate account balance on 30 June 2017 does not exceed US \$250,000 截至2017年6月30日账户加总余额不超过25万美元	No action required (subject to change in circumstances and ongoing monitoring) 无需处理（受环境与现行监管影响变化）	None 无
		Non-de minimis 其他	Aggregate account balance on 30 June 2017 exceeds US \$250,000 截至2017年6月30日账户加总余额超过25万美元	Perform search of information maintained by FI and obtain self-certification from account holder in certain cases 检索留存资料+ 部分账户声明文件	By 31 December 2018 2018年12月31日前完成

As of 2018, financial institutions need to report information of financial accounts held by non-residents by 31 May of each year.  
金融机构须自2018年起每年5月31日前按要求报送其非居民账户有关信息。

边公约》不会修改公约文本，但会改变受影响公约中各条款的运作。这意味着在具体适用一份被涵盖税收协定时，必须同时阅读公约和该协定文本。

中国提交的暂定清单列出了 102 个被涵盖税收协定，其中不包括与智利、香港、印度、澳门和台湾的税收协定或类似安排；但智利和印度提交的被涵盖税收协定中包含了与中国的税收协定。交叉核对其他签署国列表后，预计中国可能将有 48 个协定受到公约的影响。

以下是中国选择接受的主要条款，这些条款可能会对现存的双边税收协定产生影响：

- 对协定序言的有关修订，明确协定意图在消除双重征税的同时，亦防止通过逃避税行为造成的不征税或不征税。
- 在《BEPS 公约》提供的三种实质性技术规则方案中选择适用主要目的测试。
- 对于主要股东可享受股息优惠预提所得税税率的待遇，中国同意对相应协定条款进行修订，要求纳税人必须在支付股息日前的 365 天期间内都符合上述持股条件，才能享受优惠税率并列出了 36 个可能受此项修订影响的协定。
- 将引入新的双重居民加比规则来取代有效的管理测试。根据规定，有关税务机关之间未能相互协商达成一致的，则该人将不能享受该协定规定的减免，除非税务机关另有协议。

商会促请国家税务总局编制一份所有受影响的条约的合并文件和 / 或已签署或表示有意签署《BEPS 公约》的每个条约伙伴的《BEPS 公约》状态和保留。中国的现行管理规定（特别是在协定待遇申请表方面）有可能需要根据公约进行调整，从而增加对纳税人、扣缴义务人和税务机关带来合规负担。商会会员提请国家税务总局在国内和国际层面进一步澄清这些要求。

### **境外投资者以分得利润再投资递延纳税**

2017 年 12 月 28 日，财政部、国家税务总局、国家发展和改革委员会、商务部四部委联合发布了《关于境外投资者以分配利润直接投资暂不征收预提所得税政策问题的通知》（财税〔2017〕88 号）；2018 年 1 月 8 日国家税务总局又出台了 88 号文的操作性指导文件国家税务总局公告 2018 年第 3 号。

88 号文和 3 号公告落实了国务院于 2017 年 8 月发布的《国务院关于促进外资增长若干措施的通知》（国发〔2017〕39 号。对境外投资者从中国境内居民企业分配的利润，直接投资于鼓励类投资项目，凡符合规定条件的，实行递延纳税政策，暂不征收预提所得税。这些条件包括对投资方式、资金来源、资金路径和投资范围的要求。

### **进口产品的消费税问题**

根据国家税务总局公告〔2012〕第 47 号《国家税务总局关于消费税有关政策问题的公告》和国家税务总局公告（2013）第 50 号《国家税务总局关于消费税有关政策问题补充规定的公告》，一些产品在国内生产环节不需要缴纳消费税，而在进口环节，由于中国现行的 HS 系统内没有适当子类别，需要缴纳消费税。从而使国内和进口产品的税负不平衡，不利于公平竞争。我们建议税务总局、海关总署和财政部等相关部门能够加强协商并找出妥善的解决方案，让相关进口企业能够享受与国内同类产品生产企业的同等待遇。

### **过去一年中国税制改革的积极评价**

2017 年中国税局机关在税务政策上进行了多方面的改革。自 2017 年 7 月 1 日开始实施的简并增值税税率结构并取消 13% 的增值税税率对降低纳税人经营成本和营造健康公平的税收环境起到了重要作用。2017 年 10 月 30 日，国务院常务会议通过《国务院关于废止〈中华人民共和国营业税暂行条例〉和修改〈中华人民共和国增值税暂行条例〉的决定（草案）》。废止旧有的《营业税暂行条例》不仅是“营改增”改革的必然结果，更是构建综合税法体系的重要一步。2017 年 10 月，国家税务总局公布了《关于非居民企业所得税源泉扣缴有关问题的公告》（国家税务总局公告 2017 年第 37 号）及相关解读，为非居民企业所得税源泉扣缴管理提供了更为明细的指导原则和操作规范。

### **发票问题**

2017 年 5 月 19 日，国家税务总局发布了《关于增值税发票开具有关问题的公告》（国家税务总局公告 2017 年第 16 号），根据 16 号文的要求，自 2017 年 7 月 1 日起，销售方在开具普通增值税发票时必须在“买方的纳税人识别号”一栏中注明购买方的纳税人识别号或统一社会信用代码。不以此方式发行的发票不能用作税收证据。此外，当销售方开具增值税发票时，销售信息将被详细包括在内。

## International Tax Regimes

### MLI to Modify Tax Treaties

China was one of the 68 countries that participated in the signing ceremony of the OECD's "Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting" (MLI) on June 7, 2017. It is expected that the first modifications will become effective in 2018. The OECD has estimated that more than 1,100 tax treaties will be impacted by the MLI. Notably, the US, China's largest trading partner, did not attend the ceremony nor has it expressed its intent to sign the accord.

The MLI, which is the first multilateral agreement of its kind, is aimed at preventing treaty abuse and the artificial avoidance of permanent arrangements, and improving dispute resolution. As such, it is designed to ensure a stable and well-functioning establishment status, neutralizing the effects of hybrid mismatch global tax system.

The MLI will enable signatories to amend multiple treaties and implement tax treaty-related measures that are part of the BEPS project, without having to renegotiate each treaty.

The MLI requires that signatories implement two of four BEPS minimum standards, although some flexibility is allowed as to how these standards will be satisfied. In addition, the OECD also has recommended a number of other BEPS measures that signatories are free to adopt.

A treaty can only be modified if both parties to the treaty agree. The MLI will not amend the treaty text but will change the operation of various provisions in affected treaties. This means that to apply a covered tax agreement (CTA), it is necessary to read both the MLI and the treaty itself.

The Chinese provisional list of CTAs includes 102 tax treaties. The CTAs with Chile, Hong Kong, India, Macau and Taiwan have been omitted, despite the fact China is on equivalent lists in Chile and India. After cross-checking the lists of other signatories, it appears that 48 of China's treaties will be affected by the MLI.

The following are the main provisions adopted by China that may impact the existing double tax treaties signed by China.

- The preamble of CTAs are to be amended to indicate that the intent of tax treaties is to eliminate double taxation without creating opportunities for non-taxation (or reduced taxation) through tax evasion or avoidance.
- The principal purpose test (PPT) is to be adopted as the only option among three substantive rules provided by the MLI.
- A "lookback" period of 365 days will be included to determine the minimum shareholding period for substantial shareholders to benefit from a lower

withholding tax rate on dividends. China has listed 36 treaties covered by this modification.

- A new dual resident entity tiebreaker rule is to be introduced to replace the effective management test. Under the rule, the absence of a mutual agreement between the relevant tax authorities will mean a person may not be entitled to treaty relief unless the authorities agree otherwise.

AmCham China urges the SAT to produce a consolidated document of all impacted treaties and/or a list of the MLI status and reservations of each treaty partner that has signed or indicated its intent to sign the MLI. It is likely that China's administration rules (especially the documentation required to apply for treaty benefits) will be updated to accommodate the changes brought about by the MLI, thereby increasing the compliance burden on taxpayers, withholding agents and the tax authorities. Our members urge the SAT to issue further clarification of these requirements at both domestic and international levels.

### Deferral of Withholding Tax on Dividends Paid to Foreign Investors and Reinvested in China

On December 28, 2017, four Chinese ministries (the MOF, SAT, National Development and Reform Commission and Ministry of Commerce) jointly issued a notice, Circular on Policies on Temporary Exemption of Withholding Tax (WHT) for Direct Investment with Distributed Profits by Foreign Investors (Caishui (2017) No. 88), which defers the imposition of withholding tax on profits distributed by Chinese enterprises to foreign investors. On January 8, 2018, the SAT issued Bulletin 3 which contains the implementation guidance for Circular 88.

Taken together, Circular 88 and Bulletin 3 put into practice the policy announced by the State Council (Circular 39) on 1 August 2017 to roll out new policies to promote foreign investment in China. Profit distributions received by foreign investors from PRC resident enterprises in China that are directly reinvested in encouraged investment projects in China will be eligible for a deferral of the 10 percent withholding tax on the distributed profits, provided four conditions are fulfilled. Such conditions relate to the form of the reinvestment, the source of the profits, route of the reinvestment, and the scope of the reinvestment.

### **Consumption Tax Issue for Imported Products**

The "Notice of the SAT on Consumption Tax Related Rules (2012) No. 47" (Notice No. 47) and the "Notice of the SAT on Supplementary Rules for Consumption Tax (2013) No. 50" (Notice No. 50) state that some products produced in China are not subject to consumption tax, but that when these products are imported, consumption tax is levied on them as there is no proper subcode to categorize them under the current harmonized system in China. This has caused a tax

此文件进一步增加了增值税普通发票的开票内容，商会促请国家税务总局简化开票流程，节省交易时间成本。

自 2015 年起，国家税务总局开始逐步推行增值税电子普通发票。但是在实际经营活动中，由于电子发票可以多次打印、重复使用，给企业的内部控制、费用记账、税前扣除等带来风险。商会会员促请国家税务总局制定一个解决方案，以避免电子发票相关费用在企业所得税上重复列支等问题。

## 建议

### 对中国政府：

- 使地方和中央税务机关层面的跨国纳税人更容易获得单边和双边预先定价安排计划。[国家税务总局]
- 编制一份所有受影响的条约的合并文件和 / 或已签署或表示有意签署《BEPS 公约》的每个条约伙伴的《BEPS 公约》状态和保留。[国家税务总局]
- 分行业出台 CRS 合规细则。[财政部、国家税务总局、金融监管机构]
- 关注其他主要工业国家的税改进程，考虑适时对中国税制（例如：境外税收抵免制度）进行调整，以应对全球税收制度变化趋势。[财政部、国家税务总局]



difference for the same product when it is produced in China and when it is imported, which is not conducive for leveling the playing field in China. We suggest that relevant government agencies, including the SAT, GAC and MOF, work together to identify a proper solution for this issue, so that relevant import enterprises can enjoy the same treatment as in-country producers.

### *Positive Comments on China Tax Reform in the Past Year*

The SAT made further reforms from a multiple tax perspective in 2017. The structure of value-added tax (VAT) rates has been simplified, and the 13 percent VAT rate was canceled from July 1, 2017. Such measures play an important role in reducing the operating costs of taxpayers and creating a healthy and fair tax environment. On October 30, 2017, the State Council executive meeting passed the “Decision of the State Council on Interim Regulations of the People’s Republic of China on Business Tax” and “Interim Value-Added Tax Regulations of the People’s Republic of China” (Draft). The abolition of the “Interim Regulations of the People’s Republic of China on Business Tax” is not only the result of the VAT reform, but also an important step towards building a comprehensive tax law system. In October 2017, the SAT issued the “Announcement of the SAT on Issues Concerning Source-based Withholding of Enterprise Income Tax on Non-tax resident Enterprises” (SAT announcement 2017 No. 37), as well as the corresponding official interpretation, which provides more detailed instructions and implementation guidelines on the management of source-based tax withholding for non-tax resident enterprises.

### *Fapiao Issues*

On May 19, 2017, the SAT released the “Announcement of the SAT on Matters Regarding the Issuance of Value-added Tax Invoices” (Announcement of the SAT (2017) No.16). As of July 1, 2017, the seller must indicate the purchaser’s taxpayer identification number or unified social credit code in the column titled “the purchaser’s taxpayer identification number” when issuing ordinary VAT invoices. Invoices that are not issued in this way may not be used as tax evidence. Moreover, when a seller issues VAT invoices, sales information is to be included in detail. This new circular increases the amount of content that is to be printed on normal VAT invoices. We urge the SAT to simplify the invoice issue process to save transaction time costs.

Since 2015, the SAT has been promoting electronic ordinary VAT invoices. However, in practice, as electronic ordinary VAT invoices can be printed and claimed repeatedly, internal controls, expense book keeping, and tax deduction risks are all subject to increase. Our members urge the SAT to create a solution to avoid repeated expense claims on electronic invoices for corporate income tax filing purposes.

## Recommendations

### *For the Chinese Government:*

- **Make the unilateral and bilateral APA programs more easily accessible to multinational taxpayers operating in China at the level of both local and central tax authorities.** [SAT]
- Produce a consolidated document of all impacted treaties and/or a list of the MLI status and reservations of each treaty partner that has signed or indicated its intent to sign the MLI. [SAT]
- Issue detailed rules on CRS compliance for specific financial sectors. [MOF, SAT, financial regulatory bodies.]
- Monitor the tax reforms in other major industrial countries and consider updating China’s tax regime in response to the global trends. [MOF, SAT]



# Visa Policy

## Introduction

**W**hile there is agreement in Washington that the US immigration system is broken, continuing debate over immigration reform has left American employers frustrated. National security initiatives by the current administration have added to polarization over immigration and led to more controversy. AmCham China urges Congress and the President to work together to enact common sense immigration legislation that would free employers to innovate and create jobs.

While respecting the need to enforce immigration law, AmCham China recognizes that the immigrant workforce provides multiple benefits to the US, including: boosting GDP; increasing employment, wages and income; reducing government deficits; supporting the housing market; and promoting entrepreneurship and innovation that keeps the US economy dynamic.

In China, the unified work authorization system, also known as the “New Work Authorization” policy, was implemented as of April 1, 2017. The Chinese government’s goal in creating this policy lies in developing a best-in-class immigration system and attracting top foreign talent to China. Over the past months the new policy has in general resulted in a unified and simplified application process for foreign nationals with a longer lead time, as well as better monitoring of the foreign working population nationwide.

In those Chinese cities where local authorities are willing to collect feedback from employers and foreign workers, adjustments have been made to implement the new policy, in order to optimize the government processing stage and support the overall goal of the new policy. For example, the Shanghai Foreign Experts Bureau recently released a notice reducing the number of requests for additional information. The Bureau expects the move will reduce the application processing time for both Notification Letters for Work Permits and Work Permits in Shanghai.

## Recent Developments: China Visas

### *New National Policy for Foreign Work Permit Applications*

Following a six-month pilot program in 10 selected provincial-level jurisdictions between October 2016 and March 2017, the State Administration of Foreign Experts Affairs (SAFEA) officially released a centralized nationwide work authorization system on April 1, 2017. All foreigners in China are to be granted a work permit card and all applications will be assessed by the local Foreign Experts Bureau moving forward.

### *Integrating Two Permits into One*

Under the new policy, the employment permit and expert permit have been combined and now form one single work permit card. Foreigners who still hold a valid employment permit or expert permit may now change to the new work permit card as soon as they wish or when they renew their permit. AmCham China welcomes this streamlining of bureaucratic requirements, as it simplifies the process for foreigners who wish to work in China.

### *Categorization of Expats*

Under the new policy, foreign individuals working in China will be assigned one of three categories: A, B and C.

Category A: “High-end talent,” including scientists, technical experts, international entrepreneurs, and other specialists.

Category B: Foreign professionals, who qualify under a score assessment, are under the age of 60, hold a bachelor's or higher degree, and have at least two years of relevant work experience. Certain requirements may be relaxed on a case-by-case basis.

Category C: Foreign employees, who engage in temporary, seasonal, non-technical, or service-related work.

Category A foreigners are encouraged to work in China, and are therefore not subject to age restriction or BA degree requirements. Category B foreign workers are subject to quotas based on local market demand, and Category C

# 签证政策

## 引言

**虽**然在华盛顿，人们都认为美国的移民体制已破裂，但对移民美国改革喋喋不休的争论更令美国雇主深感不安。本届政府的国家安全举措也使移民问题两极分化，引发许多争议。中国美国商会（商会）敦促美国国会与总统合作，制定合理移民法律，鼓励雇主创新并创造新的就业机会。

在尊重执行移民法必要性的同时，商会也认识到移民劳工为美国带来了许多好处，包括提高国内生产总值；增加就业、工资和收入；减少政府赤字；支持房地产市场；促进创业和创新，使美国经济保持活力。

中国的统一工作许可制度又称之为来华工作许可新政策于 2017 年 4 月 1 日在全国实施。中国政府制定这一政策的目的是建立一流的移民体系，吸引外国顶尖人才来华。过去的几个月里，新政策总体上统一、简化了外国国民申请程序，使外国国民可以有更长的准备时间，同时也更有助于监管在中国工作的外国人口。

中国一些城市地方政府愿意接受雇主和外国员工的反馈，并已做出调整来实施新政策，以优化政府处理流程、实现新政策的总体目标。例如，上海市外国专家局最近发布了一份关于要求减少附加信息的通知。专家局预计，此举将减少申请上海工作许可和工作许可通知的时间。

## 最新进展：中国签证

### 有关外国工作许可申请程序的最新全国政策

2016 年 10 月至 2017 年 3 月期间，国家外国专家局在 10 个省级司法辖区试点实施了为期 6 个月的试点项目，并于 2017 年 4 月 1 日正式发布全国统一实施的外国人来华工作许可制度。所有在华外国人都将获得工作许可证，所有申请都将由当地的外国专家局进行评估推进。

### 两种许可证合二为一

根据新政策，外国人就业证和外国专家证已经合并为外国人工作许可证。持有效外国人就业证和外国专家证的外国人可以尽快改为外国人工作许可证。商会欢迎这一精简行政手续的政策，因为它有助于简化外国人在华工作流程。

### 外籍人士分类

根据新政策，在中国工作的外国人将分为 A、B、C 三类：

A 类：“高端人才”，包括科学家、技术专家、国际企业家和其他专家。

B 类：符合特定评分标准的外国专业人士，年龄不满 60 岁，拥有学士及以上学位，具有两年相关工作经验。如有必要，可放宽特定要求。

C 类：从事临时、季节性、非技术性或服务相关工作的外国员工。

中国鼓励 A 类外国人在华工作，此类人士不受人数限制。而 B 类外国人的数量配额受市场需求的限制，C 类外国人受未指定配额的限制。

### 以分数为标准的评估系统

新政策根据分数评估外国签证申请人。根据申请人教育背景、年龄、工作经验、赞助单位提供的薪水、普通话水平、在华工作地点等对申请人进行评分。

地方当局可酌情制定特殊标准，根据当地需求吸引外国人才。为此，合格申请人可获得加分。总分低于 60 分的申请人被划分为 C 类，60 分及以上属于 B 类，85 分以上属于 A 类。

### 各个类别的申请要求

商会担心这些规定会限制美资公司为企业配置工作人员的能力。

foreign workers are subject to quotas which have yet to be specified in certain locations.

### Score-Based Assessment

Pursuant to the new policy, foreign applicants are subject to a score-based assessment. Applicants are assigned scores based on their educational background, age, work experience, salary provided by the sponsor, Mandarin proficiency, working location in China, as well as other factors.

Local authorities may at their own discretion set particular criteria to solicit foreign talents based on local demands, and extra points may be awarded to candidates with especially relevant qualifications or skills. Applicants with a total score below 60 fall into Category C, those with 60 and above into Category B, and those with 85 and above into Category A.

### Application Requirements for Each Category

AmCham China is concerned that these provisions will restrict the ability of US-invested companies to staff their businesses. Category A foreign workers, or “high-level talent,” will be provided with a “green channel,” meaning:

- There are no limitations on individuals’ age in most locations.
- Requirements for work experience and level of education can be relaxed in most locations, and notarization of diplomas may not be required.
- In most locations, the employer may guarantee that the individual has a clean criminal record in lieu of providing a certificate of non-criminal conviction from the individual’s home government.
- In some cities, an individual present in China with a valid visa may apply for a work permit onshore instead of having to apply offshore, and may then convert the visa to a China residence permit directly.
- The timeline of the Notification Letter for Work Permit and Work Permit applications will be shorter than the current process.

Category B foreign workers, or “professional personnel,” must meet the following requirements in order to be eligible for a China work permit:

- The individual needs to possess a Bachelor’s or higher degree and at least two years of relevant work experience.
- The Notification Letter for Work Permit or Work Permit applications must be accompanied by an official degree certificate and non-criminal record legalized by the Chinese Embassy or Consulate in the country where the document is issued.

Category C foreign workers are subject to a quota: further information has yet to be published by SAFEA.

AmCham China is concerned that these provisions will restrict the ability of US-invested companies to staff their businesses. A major area of concern among the American business community is the stated ceiling on eligibility for a Category B visa for those over the age of 60 (although high scores on other criteria may result in an exception). In the US, there is no mandatory retirement age although eligibility for full Social Security benefits is reached at age 66, which is common in other countries as well. Our recommendation is that as long as a professional individual is legally employed and compliant with relevant tax and related regulations, there should be no age restriction or limit.

Moreover, requirements for work permit applicants to submit notarized and authenticated copies of documents create unnecessary administrative burdens for both applicants and diplomatic staff. We urge labor authorities nationwide to provide applicants the option of submitting original documents instead of notarized and authenticated copies of documents, in order to reduce administrative burdens and accelerate the hiring of foreign talent in China.

We further urge transparency regarding the national and local criteria for the score-based assessment system. AmCham China urges the Chinese government to ensure that otherwise qualified individuals are not prevented from working in China because of overly rigid requirements in the assessment system and unsupported work permit quotas for different categories of foreign talent.

### Online Application System

AmCham China welcomes the new SAFEA online application system, which is intended to clarify and homogenize work permit policy and processing timelines across the country. Companies may now create online accounts and then submit foreign employee applications through the online system.

Applicants will be able to download forms and submit them electronically. A permanent code will be assigned to each applicant so that individual applications can be tracked. The modified application procedure is intended to reduce the amount of required documentation and processing time for applicants.

### Five-Year Residence Permit Pilot Program

A five-year residence permit program has been initiated in Shanghai and is available to foreigners who have worked in China for at least two consecutive years, provided their employer sponsors the application. AmCham China welcomes this program, as it will reduce the administrative burden on the relevant authorities and help attract more global talent to China. We urge the Ministry of Public Security (MPS) to expand the five-year residence permit to a nationwide pilot as soon as possible.

A类外国人（“高端人才”）可获得“绿色通道”，即：

- 大部门地区不受个人年龄的限制；
- 大多数地区可以放宽对工作经验和教育水平的要求，也不需要对比文凭进行公证；
- 多数地区需雇主承诺担保申请人没有犯罪记录，无需申请人所在国政府出具的无犯罪记录纸质件；
- 在一些城市，持有效签证的在中国的外国人可以在境内申请工作许可，而不必在境外申请，然后将有效中国签证直接转换为中国居留许可；
- 外国人工作许可通知函和工作许可的申请时间短于当前流程。

B类外国人（“专业人员”）必须符合以下要求方可获得中国工作许可证：

- 拥有学士或以上学位，拥有至少两年相关工作经验；
- 申请工作许可证或工作许可申请的通知函必须提交正式学位证书和中国驻该国大使馆或领事馆签发的无犯罪记录证明。

C类外国人受配额限制——详细信息尚待外专局发布。

商会担心这些规定将限制美资公司为企业配置工作人员的能力。美国商界最关心的一个问题是，对60岁以上人士限制申请B类签证（尽管在其他标准方面获得高分的话可能会有所例外）。美国没有强制性的退休年龄，但是在66岁时有资格享受完整社会保障福利，这在其他国家也很常见。我们的建议是，只要专业人士合法就业并符合相关税收及其他相关规定，就不应限制年龄。

此外，要求工作许可申请人提交经过公证和认证的文件副本，也为申请人和外交人员带来了不必要的行政负担。我们敦促国家相关劳动管理部门允许申请人提供原件而非经过公证和认证的文件副本，以减少行政负担，加快招聘流程，为中国提供必要的外国人才。

商会进一步促请国家和地方当局提高分数评估系统的透明度。商会也促请中国为不同类别的外国人才确定工作许可配额，制定分数评估制度要求，以避免符合要求的外国人无法在华工作。

## 在线申请系统

商会欢迎国家外专局采用新的在线申请系统，该系统旨在统一全国工作许可政策与受理时间，并提高透明度。现在，公司可以创建在线帐户，在线提交外国员工申请。

申请人可以通过互联网下载表格，并以电子方式提交申请表。系统为每份申请人分配永久代码，可用于跟踪该申请人的情况。修改后的申请程序旨在减少申请需要的文件数量和受理时间。

## 五年居留许可试点计划

五年居留许可计划已经在上海开始推行，允许连续两年在中国工作的外国人申请五年居留许可证，前提是雇主为该申请提供资助。商会欢迎这个方案，以减轻政府的行政负担，帮助中国吸引全球人才。因此，我们敦促公安部尽快扩大全国五年居留许可证试点工作。

## 永久居留

为支持将上海建设成为全球科技创新中心，继续推动北京的创新发 展，公安部颁布了新的移民政策法规。新政策明确了申请人获得永久居留权的标准。

根据北京的新规定，在雇主支持下，满足以下标准的人士将有资格获得永久居留权：

- 申请人在北京连续工作四年以上，每年在中国居住至少六个月；
- 申请人每年取得的工资总额至少为50万人民币，且缴纳税款超过10万人民币（此标准可以每年调整）。

根据上海的新规定，在雇主支持下，满足以下标准的人士将有资格获得永久居留权：

- 申请人在上海连续工作四年以上，每年在中国居住至少六个月；
- 申请人每年取得的工资总额至少为60万人民币，且缴纳税款超过12万人民币（此标准可以每年调整）。

## 简化后的临时居留许可申请程序

北京、上海、深圳和广州都适用简化的申请程序（也称为“逆流”）。已取得工作许可通知的外国人，如在以上四个城市中的任意城市已持有有效的中国签证/居留许可中，可在取得工作许可前申请临时居留许可。临时居留许可有效期北京和广州为3个月，深圳6个月，上海近1年。

## *Permanent Residence*

The MPS has issued new immigration policies and regulations to support efforts to establish Shanghai as a global science and innovation center, and sustain the development of innovation in Beijing. The new policies clarify the standards for obtaining permanent residence in these two cities.

Under the new regulation for Beijing, individuals who meet the following criteria will be eligible for permanent residence, providing they are sponsored by their employers:

- The individual has worked in Beijing for four or more consecutive years and resided in China for at least six months in each of those years.
- The individual earns a gross salary of at least RMB 500,000 and pays tax of more than RMB 100,000 each year (these thresholds may be adjusted annually).

Under the new regulation for Shanghai, individuals who meet the following criteria will be eligible for permanent residence, providing they are sponsored by their employers:

- The individual has worked in Shanghai for more than four or more consecutive years and resided in China for at least six months in each of those years.
- The individual earns a gross salary of at least RMB 600,000 and pays tax of more than RMB 120,000 each year (these thresholds may be adjusted annually).

## *Simplified Temporary Residence Permit Application Procedures*

A simplified application process (also known as an “inverse process”) is available in Beijing, Shanghai, Shenzhen and Guangzhou. Foreigners who have obtained a Notification Letter of Work Permit may apply for a temporary residence permit before obtaining the work permit, if they are already in any of these four cities with a valid Chinese visa/residence permit. The temporary residence permit is valid for 3 months in Beijing and Guangzhou, 6 months in Shenzhen, and almost one year in Shanghai. Foreigners are required to renew their residence permit before the expiration date.

## *E-Channel at Ports of Entry*

The Automated Passenger Clearance System, or “E-Channel,” allows entry to China through an automated station that shortens queuing time for entering mainland China. Under this new measure, permanent residents and foreigners who hold a long-term residence permit in China (6 months or longer) can use the e-channel at the border. Registration is required at the airport before the individual is able to use e-channel. Introduction of the e-channel for resident foreigners was permitted based on AmCham China’s request two years ago, and we sincerely thank the relevant authorities for their foresight in implementing this procedure.

This measure has simplified entry and exit for long-term foreign residents of China making international trips and reduced the workload of immigration staff.

## **Ongoing Regulatory Challenges: Chinese Visas**

### *Start Date of Working in China for International Assignees*

Under the current rules, foreign employees need to obtain both a work permit and residence permit before they officially start working in China. After the nationwide implementation of the new work permit application policy in April 2017, applications for these two permits can take around 5 weeks from the time foreign candidates enter mainland China with their work visa (Z visa). However, foreign candidates cannot work until both permits are approved.

However, international assignees will most likely wish to continue working during this interim period. Once they have left their previous role in another country and entered China on a work visa, it is unrealistic for them to be expected to spend more than one month in China without working.

In response to this situation, AmCham China recommends that authorities make a distinction between locally hired foreign employees and international assignees in policy and in practice. Foreign assignees who have obtained a Notification Letter for Work Permit should be allowed to start working for the host entity in China upon entering the country on a Z visa or M business visa.

### *Older Workers and New Graduates*

Work authorization applications submitted by foreign nationals nearing or above the official employment age (i.e., men over 60 and women over 55 years of age) are sometimes subject to longer processing times. They may be required to provide additional documentation, and ultimately be denied work permits because of their age. Although category A applications are not affected by age-limitation regulations, applicants in categories B and C are still subject to age restrictions. Many of these older applicants hold critical skills and relevant experience needed by companies. According to the OECD, the average retirement age among 34 major countries is 65, and moving towards 67. It is therefore recommended that the age limitation be lifted for category B applicants at least, as long as a professional individual is legally employed and compliant with relevant tax and related regulations.

Recent graduates also face difficulty in obtaining work authorization, as they often lack the required two years’ worth of work experience. This requirement not only limits an employer’s ability to hire young foreign talent, it also creates disincentives for prospective foreign students to study Chinese language because it limits their post-grad-

外国人需要在有效期前更新其居留许可。

## 入境港电子通道

自动乘客运关系统，也称为“电子通道”，允许乘客通过自动化工作站入境中国，从而缩短进入中国大陆的排队时间。根据这项新措施，在中国持有长期居留许可的永久居民和外国人（有效期6个月及以上）可以在边境使用电子通道。用户需要在机场注册，获批后即可使用电子通道。商会欢迎这项措施，帮助长期居住在中国的外国人更方便地进行国际旅行，简化了进出程序。根据商会在两年前提出的请求，允许为外国居民推出电子通道，商会衷心感谢有关当局在实施这一程序方面的远见卓识。这一措施帮助长期居住在中国的外国人更方便地进行国际旅行，并减轻了移民工作人员的工作量。

## 现存监管问题：中国签证

### 外国员工在中国工作的起始日期

根据现行规定，外国雇员在正式开始在华工作之前，需要获得工作许可和居留许可。2017年4月全国实施新的工作许可申请政策后，在申请人持工作签证（Z签证）进入中国大陆后申请该两项许可需要约5周的时间。然而，获得批准之前外国员工都不能工作。

但是，在这段过渡时期内，外国人可能希望继续工作。一旦他们离开自己国家的工作岗位，并持工作签证进入中国，在中国待大概一个多月而不工作对他们来说不现实。

为应对这种情况，商会建议当局在政策制定和执行政策时对在当地雇用的外国雇员和外国员工进行区分。应批准已取得工作许可通知的外国员工，持Z签证或M商务签证进入中国境内后就可以开始工作。

### “超龄”员工和新毕业生

临近或超过中国官方退休年龄（即男性超过60岁，女性超过55岁）的外国公民申请工作许可时往往要面临更长的受理时间，提交更多的材料，最终还可能因为年龄而被拒绝。尽管中国放宽了对A类申请人的年龄要求，但B类和C类申请人仍面临年龄限制。很多年龄较大的申请人往往掌握着企业所需要的重要技能和丰富经验。我们建议至少应放宽对B类申请人的年龄限制。根据经合组织的数据，34个主要国家的平均退休年龄为65岁，并逐渐趋向67岁。

因此，建议至少应放宽对B类申请人的年龄限制，只要专业人员合法就业并符合相关的税收和相关规定。

新毕业的大学生在申请工作许可方面也面临困境，因为他们普遍缺少所要求的两年相关工作经验。这一要求不仅限制了雇主雇用外国雇员的能力，也挫伤了外国学生学习中文的积极性，因为这条规定限制了外国学生毕业后在中国的就业前景。根据人力资源和社会保障部、外交部和教育部于2017年1月联合发布的《关于允许优秀外籍高校毕业生在华就业有关事项的通知》（第3号通知），如符合特定标准，在国内大学或国外知名大学获得硕士及以上学历的毕业留学生，在毕业后一年内申请工作许可时可以不受两年以上工作经验要求的限制。第3号通知并没有说明“知名”外国大学的定义。我们建议中国政府将此类机遇扩展至具有出色技能和能力的持学士或以上学历的国内和国外大学毕业生，这将会使雇佣企业大大受益。

影响企业的一个相关方面是由于签证要求而无法聘用短期实习生。为有前途的学生/应届毕业生提供长达6个月的有偿或无薪实习是一种常见的企业做法。我们建议改革对这些人员的规定，以使本地要求与国际惯例接轨。

### 居留许可签发时间

中国不同城市居住许可的处理时间从5个工作日到15个工作日不等。北京2015年将签发时间从15个工作日缩短到10个工作日，然后又减少到7个工作日办结。由于Z签证的初始文件要求很高，所以很难理解为什么处理时间要比过去长得多，过去只需要很少的附加信息。其次，由于申请人的护照原件在整个过程中是由公安局保管，这给申请人的旅行和其他活动带来困难，商会鼓励在全国范围内将处理时间缩短至5个工作日，这是目前天津的做法。

### 外籍员工合同提前终止后其家属的居留许可

在中国现行的规定下，外籍员工在中国终止合同后需要在10个日历日内注销其工作许可和居住证。这也适用于其配偶和家属持有的居留许可。外国雇员提前终止在中国的工作，但是其家庭成员可能因个人原因需要留在中国，例如，孩子需要完成学期教育；照顾抚养孩子等。国际学校要求16岁以下的学生由成人陪同才能获得学生签证。如果陪同的成人是外国人，他/她的中国居住证有效期必须至少一年。在这一框架下，如果不能保留配偶和孩子的居住证，那么孩子将需要终止他/她在学校一学期的学业，离开中国。



uation employment prospects in the country. The “Notice on Allowing Outstanding Foreign Graduates to Work in China” (Circular No. 3) in January 2017, jointly issued by the Ministry of Human Resources and Social Security, Ministry of Foreign Affairs, and Ministry of Education, allows waiver of the requirement for two years of relevant postgraduate work experience for international graduates holding at least a master’s degrees from domestic universities or from well-known foreign universities when they apply for a work permit within one year after graduation, if certain other criteria are met. However, Circular No. 3 does not define “well-known” foreign universities.

We recommend that the Chinese government relax the policy to include recent graduates with a bachelor’s degree or above from domestic and overseas universities, if said graduates have outstanding skills or talent which would significantly benefit the hiring companies and business.

A related area which affects business is the inability to hire interns on a short-term basis due to visa requirements. It is a common corporate practice to provide paid or unpaid internships to promising students/recent graduates for a period of up to 6 months. We recommend that regulations regarding such persons be reformed in order to bring local requirements more in line with global practices.

### ***Residence Permit Processing Time***

The processing period for residence permits ranges from 5 to 15 business days in different cities in China. In Beijing, the period was shortened from 15 business days to 10 business days in 2015, and then further reduced to 7 business days for cancellation applications. As the initial documentation requirements for Z visas are high, it is difficult to understand why processing times are so long compared to the past, when little additional information has been required. Secondly, given that an applicant’s original passport is held by the Public Security Bureau (PSB) during the entire process which makes travel and other activities quite difficult, AmCham China encourages a nationwide reduction of processing times to five business days, as is the current practice in Tianjin.

### ***Dependent Residence Permit after Early Termination of Foreign Employee’s Contract***

Under current rules in China, the termination of employment for a foreign employee in China necessitates the cancellation of his/her work permit and residence permit within 10 calendar days. This also applies to the residence permits held by spouses and dependents. Under circumstances where the foreign employee terminates his/her work in China earlier than expected, family members may need to stay in China for personal reasons, e.g., to complete the current school term and care for such dependent child. International schools require students under 16 years old to be accompanied by an adult, in order to sponsor their student visas. If the accompanying adult is a foreigner, his/her China residence permit needs to

be valid for at least one year. Under this framework a dependent would need to terminate his/her studies in the middle of a school term and leave China, if the spouse and dependent residence permits cannot be retained.

AmCham China recommends that in such circumstances the PSB should allow the family members’ dependent residence permits to remain valid until their original expiration dates, if the individuals submit an additional application outlining reasons for the need to stay longer in China.

### ***Certificates of No Criminal Conviction for Foreigners Who Have Resided in China***

China should facilitate the process for foreigners who have resided in China for work or other purposes to subsequently apply for a Chinese certificate of no criminal conviction (CNCC). These are needed for procedures such as background checks for employment or immigration to other countries including the US, Canada, Australia, and New Zealand.

In some major cities, such as Beijing and Shanghai, the process to apply for a CNCC can be fairly straightforward. However, in many cities, there are no publicly available rules for how to apply for a CNCC, and the process can be onerous. For example, authorities in cities such as Chengdu require that the individual apply in person, meaning an agent with the power of attorney cannot be used. In other cities, such as Shenzhen, the process may require the applicant to mail in their original passport (creating a risk of loss), a fingerprint card, and authenticated supporting documentation, which are expensive and time-consuming to obtain. In other cities, if the foreigner has not kept the documents showing temporary residence registration at the local police station, it is not possible to obtain a CNCC. In many cities, local authorities are unaware of any policies regarding CNCCs.

AmCham China recommends the publication of a ministry-level, nationwide regulation to streamline the application process for CNCCs. A photocopy of the foreign national’s passport and his/her Chinese residence permit should constitute sufficient supporting documentation for a CNCC application. Foreigners should not be required to apply for a CNCC in person, to send their original passport to China, to authenticate supporting documents, or to present their old temporary residence registration documents issued by the local police station.

## **Recent Developments: US Visas**

### ***Controlling Non-Immigrant Visa Appointment Waiting Times in China***

AmCham China was disappointed that on June 21, 2017, President Trump amended executive order 13597, rescinding a key provision intended to speed up visa interview waiting times for non-immigrant visa applicants in China. These

商会建议，在这种情况下，如果个人提交额外申请，说明需要在中国停留更长时间的理由，那么公安局应该允许家庭成员的家属居留许可保持有效至原始到期日期。

## 在华居住的外国人无犯罪记录证明

对于因工作或其他目的而在中国居住的外国人，如因就业或移民而前往美国、加拿大、澳大利亚或新西兰等国家时，为通过背景调查，可能需要中国提供无犯罪记录证明（CNCC），而这一过程需要优化。

在北京和上海等主要城市，申请无犯罪记录证明的过程相对简单，但许多其他城市并没有申请无犯罪记录证明的公开程序，而且申请手续可能相当复杂。例如，成都等城市要求申请人本人返回中国申请，不能通过持有委托书的代理人办理。深圳等其他城市可能会要求申请者邮寄他们的护照原件（有造成损失的风险）、指纹卡和认证证明文件，昂贵且耗时。在其他城市，如果外国人没有保存在当地派出所办理临时住宿登记的文件，就无法取得无犯罪记录证明。在许多城市，地方当局往往不知道任何有关无犯罪记录证明的相关政策。

商会建议制定全国性部级规定，以简化无犯罪记录证明的申请程序。申请人提供中国居留证和外国护照复印件，即可充分支持无犯罪记录申请。不应要求当事人返回中国申请无犯罪记录证明，发送护照原件到中国，认证证明文件，或出示由当地警察局发放的临时居留许可证原件。

## 最新进展：美国签证

### 控制中国非移民签证预约等待时间

2017年6月21日美国总统特朗普修改了行政令13597，商会对此感到失望。此次修改取消了一项关键条款，该条款旨在加快中国非移民签证申请人的签证面谈等候时间。其中包括前往美国出差或游玩的游客、学生和其他临时访客。该条款指示美国国务院和国土安全部确保在当地资源和安全考虑允许的范围内，组织80%的非移民签证申请人在收到申请的三周内进行面谈。

与中国有商业合作的美国公司需要客户、合作伙伴和海外员工及时出差。商会2013年《白皮书》对2012年的行政命令表示欢迎，并解释到：

“在截至2010年的10年里，美国国际旅客支出市场总额的占比从17%降至11%，美国在全球市场的份

额下降了30%以上。原因之一是美国签证系统负担过重，签证处理能力不足。2010年，等待签证的时间超过了100天；2011年，等待时间超过70天。美国无法借势中国日益繁荣的签证需求。但国务院实施措施，执行EO13597令，取得了巨大进展，包括在中国招聘50名新领事官员，减少签证办理时间……”。

特朗普总统的修正案要求国务卿和国土安全部长带头修订EO13597的执行方案。商会请求该计划能帮助美国驻华大使馆和领事馆继续缩短非移民签证申请人等待时间。商会主张，该计划应包括尽快在武汉开设美国驻武汉领事馆，进行非移民签证面试，并在中国增设至少4个签证点。备选地点可能包括有200多万城市居民却没有美国领事馆的城市，比如重庆、大连和深圳。

### 国际企业家规则

美国公民和移民服务局发布了有关国际企业家入境证的最终规则，该规定原定于2017年7月生效。然而，特朗普政府推迟了该规则的实施，并已开始努力撤销该规定。

“入境证”允许符合要求的企业家在没有签证的情况下进入美国初创公司工作。此类初创企业必须在过去5年内成立，并具备快速增长和创造就业的潜力。此类初创公司必须在过去的1年半里获得美国投资者的最低投资，或政府奖励或津贴。鉴于企业家缺乏签证选择，美国移民局的规则是刺激经济增长和创造就业的明智政策。我们强烈要求保留这项规定。

### 签证更新电子系统申请人提交社交媒体的信息

签证更新电子系统（EVUS）是一个要求外国公民在前往美国之前必须向美国海关和边境保护局更新签证信息的在线平台。目前，EVUS仅适用于持中国护照上含有效期10年的B-1/B-2签证身份申请赴美的人士。

2017年2月，美国海关和边境保护局发出通知，要求EVUS注册用户确认使用的社交媒体平台及其账号（如：网名）。美国海关和边境保护局公告称，EVUS社交媒体问题将被标注为“可选”。然而，不透露这些信息可能会被拒绝入境。此外，美国海关和边境保护局可能会在没有任何可疑情况下，不告知设备持有人去搜寻或保留一个电子设备，或复制加密后的数据以便之后搜索。

另一个令人担忧的问题是，美国海关和边境保护局没有解释该机构使用被调查者社交媒体信息的范围。一个人的社交媒体活动不仅显示了账户持有人的信息，还有他/

applicants include visitors traveling to the US for business or pleasure, students, and other temporary visitors. That provision had directed the US Departments of State and Homeland Security to ensure that 80 percent of non-immigrant visa applicants are interviewed within three weeks of the date their applications are received, to the extent permitted by local resources and security considerations.

US companies doing business with China depend on timely visits from customers, partners, and employees from abroad. AmCham China's 2013 *White Paper* applauded the 2012 executive order, explaining:

"During the decade ending in 2010, the US market share of spending by international travelers fell from 17 percent to 11 percent, a more than 30 percent decrease in the US share of the global market. Among the reasons for the slide were a burdensome US visa system and lack of visa processing capacity. [Waits for visa appointments had at times exceeded 100 days in 2010 and 70 days in 2011.] The US was unable to take advantage of booming US visa demand by Chinese. But measures put in place by the State Department to implement EO 13597 have made impressive strides, including hiring 50 new consular officials in China [and] decreasing visa processing times."

President Trump's amendment requires the Secretaries of State and Homeland Security to take the lead in revising the implementation plan for EO 13597. AmCham China requests that the plan address how the US Mission in China can continue to provide short waiting times for appointments for non-immigrant visa applicants. AmCham China advocates that the plan include opening the US Consulate in Wuhan for non-immigrant visa interviews as soon as possible, as well as adding at least four additional visa-issuing locations in China. Potential locations might include cities with over two million urban inhabitants and no US Consulate, such as Chongqing, Dalian, and Shenzhen.

### ***International Entrepreneur Rule***

The US Citizenship and Immigration Services (USCIS) issued a final rule on parole for international entrepreneurs, which was set to become effective in July 2017. However, the Trump administration has delayed the implementation of the rule and has begun efforts to rescind it.

"Parole" would allow qualifying entrepreneurs to enter the US and work at startups without visas. Such startups must have been created within the last five years and have the potential for rapid growth and job creation. The startups must also have received certain minimum investments from US investors, or government awards or grants, within the past 1.5 years. Given the lack of visa options for entrepreneurs, the USCIS rule is a shrewd policy for spurring economic growth and job creation. We urge that the rule not be rescinded.

### ***Subjecting EVUS Registrants to Questions about Social Media Use***

The Electronic Visa Update System (EVUS) is an online platform through which certain foreign nationals must provide visa information updates to the US Customs and Border Protection (CBP) in advance of their travel to the US. Currently, the EVUS applies only to persons seeking admission to the US on the basis of a 10-year B-1/B-2 visa in a Chinese passport.

In February 2017, the CBP issued a notice regarding its intent to ask EVUS enrollees to identify the social media platforms they use and their identifiers (i.e., handles). The CBP notice states that the EVUS social media question will be labeled as "optional." However, refusal to disclose this information may result in a person being denied admission to the country. Further, the CBP may search or retain an electronic device, or copy encrypted data for later search without any cause for suspicion and without notifying the owner.

An additional concern is that the CBP does not explain the scope of how the agency will use a respondent's social media information. An individual's social media activity not only reveals information about the account holder, but also about people in his/her social networks, including family members, friends, and "followers." It is possible that the CBP could subject those persons to invasive scrutiny and exposure without consent. The CBP could even probe a traveler based on messages in their social media account left by third parties, who may be completely unknown to the individual, without the traveler's knowledge or consent. CBP rules place no limit on the period of time that the agency may store social media identifiers and subject their posts to scrutiny.

The CBP's proposed EVUS social media questions are likely to have a negative impact on US businesses, including AmCham China member companies. For US businesses in the travel and tourism industries, Chinese visitors constitute a critical market. To the extent that many Chinese citizens perceive the CBP's proposed social media questions as an invasion of personal privacy, the rule creates a disincentive to travel to the US. AmCham China member companies in other industries will also be negatively impacted, as the CBP's proposed social media questions make it more difficult for such companies to persuade employees, partners, and customers to undertake business-related travel to the US.

Further, US requests for social media identifiers will almost certainly lead to similar requests from other countries, as many countries grant visas or visa waivers on a reciprocal basis. Many US citizens may perceive requests for social media identifiers from other countries' immigration authorities as an invasion of personal privacy and a breach of their freedom of expression.

她的社交信息，包括家庭成员、朋友和“粉丝”。美国海关和边境保护局可能会在未经同意的情况下，对出行人进行侵入性检查并泄露信息。美国海关和边境保护局甚至可以在出行人未知或者未同意的情况下，通过可能本人都不知道的第三方社交媒体账户来调查出行者的信息。美国海关和边境保护局没有限制该机构可能存储申请人社交媒体账号并审查其发布信息的时间周期。

美国海关和边境保护局提出的 EVUS 社交媒体问题可能会对美国企业产生负面影响，包括商会会员企业。对于美国出行和旅游行业的企业来说，中国游客是其重要市场。许多中国公民认为，美国海关和边境保护局提出的社交媒体问题侵犯了个人隐私，这一规定挫伤了前往美国的积极性。商会在其他行业的成员企业也将受到负面影响，因为美国海关和边境保护局提出的社交媒体问题使得此类公司更难说服员工、合作伙伴和客户到美国出差。

此外，美国对社交媒体账号的要求几乎肯定会影响其他国家提出类似要求，因为许多国家是在互惠的基础上发放签证或签证豁免。许多美国公民可能会把来自其他国家移民当局的社交媒体账号要求视为侵犯个人隐私，并侵犯他们的言论自由。

## 现存监管问题：美国签证

商会重申我们对 2017 年《白皮书》的关注和建议：

- 消除按国别分配工作绿卡的歧视性政策；
- 需要使 DS-160 非移民签证网上申请表更人性化。

与美国签证相关的其他监管问题包括以下内容：

### 年度 H-1B 签证限制不足

多项研究显示，H-1B 项目给美国企业和工人增加就业机会和工资水平有积极影响。例如，全美制造商协会的一份报告显示美国需要高技能的移民，有 82% 的美国制造商很难寻找到具备合适技能的员工。此外，美国商会针对美国公司雇用的科学、技术、工程或数学专业的外国学生报告表明，每名 H-1B 员工能够为美国员工创造 2.62 个工作岗位。H-1B 员工的乘数效应是来自他们对公司的贡献以及他们作为消费者的作用。<sup>9</sup> 此类 H-1B 员工必须按照在地理区域内特定职业的现行工资进行支付。此外，申请费也为美国职工的科学、技术、工程和数学教育提供了重要资金。

美国国会每年批准 H-1B 签证的数量受到限制，不能满足美国公司雇用外国专业人员的需求。H-1B 签证为临时工作签证，发放给为美国雇主工作的专业人员，这些专业人员的工资最低为现行工资。在过去 14 个财年里，每年 8.5 万份签证的年度上限已经用尽。2017 财年，仅在开放签证的第一周，美国公民和移民服务局收到了超过 23.6 万份 H-1B 签证申请；而在 2018 财年的第一个星期，收到了 19.9 万份申请。还要随机抽取来确定通过审查者，这给美国企业的招聘过程带来了不可预测性。尽管这种不公平的过程并非有意为之，但随着时间的推移，这一流程按照全球流动性标准已过时，需要重新审视和适应现代环境。不应该允许公司使用 H-1B 系统来降低劳动力成本。

国会立法增加限制将使美国公司获得顶级人才，同时也促进竞争，提高生产力。另一方面，H-1B 签证上限过低，或者特朗普政府“买美国货，雇用美国人”的计划挫伤了 H-1B 签证的申请人，这会将技术员工推向竞争国家，美国雇主因此会转而考虑将工作交给驻外员工。

### 永久居民在国外求职面临的障碍

美国移民法禁止美国公司招聘有意在美国境外就职的绿卡持有人。

如果绿卡持有人连续居留国外一年，期间不曾返回美国，则该持有人将无法再次进入美国。不过，希望在美国公司驻外就职的绿卡持有人可以申请在国外逗留最长两年后再次入境的许可证。然而，目前的美国公民及移民服务局程序要求申请人必须在美国居住，不仅要在美国提交申请，而且要在一到两个月后进行生物特征识别验证。这些程序对需要返回美国进行预约的申请人增加了不必要的费用。美国公民和移民服务局的国外办事处已经在开展具有不同用途的生物识别验证。我们敦促美国公民和移民服务局在不需要说明例外情况的情况下，允许再入境许可申请人在其国外办公室（包括北京和广州办事处）接受生物特征识别验证。

### 在北京建立全球入境登记中心

商会及其会员强烈建议在北京设立全球入境登记中心。由于中美航班抵达时间和 / 或无法安排与旅行时间表相匹配的面试，在抵达美国后无法进行面试。新加坡全球入境登记中心是亚洲唯一可进行申请的地点，目前面试等待时间为 9 个月。鉴于美国公民在华人数量众多，有必要在北京增加另一个全球入境登记中心。

## Ongoing Regulatory Challenges: US Visas

AmCham China reiterates our concerns and recommendations from the 2017 White Paper regarding:

- Discriminatory per-country caps on employment-based green cards should be eliminated.
- There is a need to make the online Form DS-160 and Nonimmigrant Visa Application more user friendly.

Additional ongoing regulatory challenges related to US visas include the following.

### *Inadequate Annual H-1B Visa Cap*

Multiple studies have shown the positive impacts on job creation and wage levels that the H-1B program gives to US businesses and workers. For example, a report by the National Association of Manufacturers indicated a need for skilled immigrant workers after it found that 82 percent of US manufacturers reported difficulties in finding workers with the right skills. Additionally, a report by the US Chamber of Commerce on foreign students hired by US companies with degrees in science, technology, engineering, or mathematics showed that each H-1B employee creates 2.62 additional jobs for US workers. The multiplier effect comes from H-1B workers' contributions to their companies and their role as consumers. In addition, filing fees are deposited into a significant fund set aside for the STEM education of US workers.

The number of H-1B visas permitted annually by Congress is subject to a cap that fails to meet demand by US companies that hire foreign professionals. The annual cap of 85,000 visas has been exhausted in each of the past 14 fiscal years. In the first week that such visas became available for FY 2017, USCIS received more than 236,000 H-1B petitions, and for the first week of FY 2018, it received 199,000 petitions. Winners were selected through a random lottery, creating unpredictability for American companies' hiring processes. Although not intended to be an unfair process, over time it has become dated by global mobility standards and needs to be reviewed and adapted to modern circumstances. Companies should not be allowed to use the H-1B system to lower labor costs.

Congressional legislation increasing the cap would give US companies access to the best talent, spurring competitiveness and productivity. On the other hand, adopting an H-1B cap that is too low or disincentivizing H-1B hires through the Trump Administration's "Buy American, Hire American" initiative, drives skilled workers to competitor nations and encourages US employers to consider shifting projects to workers abroad.

### *Barriers to Permanent Residents Taking Assignments Abroad*

US immigration laws inhibit American companies from recruiting green card holders who wish to take assignments outside the US.

A green card becomes invalid for re-entry to the US if the holder remains abroad continuously for one year without returning. However, a green card holder who wishes to take an assignment for a US company abroad may apply for a re-entry permit valid for an overseas stay lasting up to two years. Unfortunately, current USCIS procedures require that the applicant be present in the US not only to file the application but also to appear at a biometrics appointment one to two months later. These procedures impose an undue expense on applicants who need to return to the US for the appointment. USCIS offices abroad already conduct biometrics appointments for various purposes. We urge the USCIS to allow re-entry permit applicants to have their biometrics taken at USCIS offices abroad, including those in Beijing and Guangzhou, without need to prove extenuating circumstances.

### *Need for a Global Entry Enrollment Center in Beijing*

AmCham China and its membership strongly suggest that a Global Entry Enrollment Center be established in Beijing. Interviewing upon arrival in the USA does not work in practice due to China-US flight arrival times, and/or the inability to schedule interviews that match travel schedules. At the Global Entry Center in Singapore, the only location in Asia where an application can be made, wait times for an interview currently stand at 9 months. Given the large number of US citizens in China, it would make sense to add another center in Beijing.

## Recommendations

### *For the Chinese Government:*

- **Consider accepting original documents instead of notarized ones for work authorization applications in special conditions.**
- Visa age limits are an issue for companies. We recommend that if a professional individual is legally employed and compliant with relevant tax and related regulations, there should be no age restriction or limit in regard to their visa status, as is the case in most places in the world.
- Allow international assignees who have entered China on a Z visa or M business visa to start business activities during the processing period for the work permit and residence permit, if a Notification Letter has been obtained.

## 建议

### 对中国政府：

- 考虑在特殊情况下，允许申请工作许可时提交原件而非提供经过公证和认证的原件副本。
- 签证年龄限制是公司面临的一个问题。我们建议，像世界上大多数地方一样，如果专业人士合法就业并遵守相关税收和相关法规，则其签证身份应该没有年龄限制。允许以 Z 签证和 M 商务签到达中国的已经获得工作许可通知的申请人在办理工作许可和居留许可过程中工作。
- 除 A 类申请人外，至少取消对 B 类申请人申请中国工作许可的年龄限制，取消具有学士或以上学位的、具有出色技能和才能的申请人的工作经验限制。
- 在全国范围内允许将公安部门受理居留许可申请时保留申请人护照时间缩短至五个工作日。
- 如果外国员工（主要申请人）由于中国合同提前终止而注销工作许可和居留许可，允许其家属因合理原因保持居留许可至其原定有效期。
- 考虑对实习政策进行检视。

### 对美国政府：

- 国会应取消国别分配工作绿卡的歧视性制度。
- 国会应审查现行的 H-1B 和绿卡政策，以使其更符合现代全球企业流动性要求。
- 国会应提高专业人员 H-1B 零时工作签证年度上限。
- 国务卿和国土安全部长应带头修改 EO13597 的执行计划。商会要求该计划帮助美国驻华大使馆和领事馆在中国继续缩短非移民签证申请人等待时间。该计划应包括尽快在武汉开设美国驻武汉领事馆进行非移民签证面试，并在中国增设至少 4 个签证点。
- 特朗普政府应为 H-4 员工配偶保留国际企业家规则和就业授权。

- EVUS 注册不应要求旅客向美国公布其社交平台和使用名称。
- 国务院应重新设计 S-160 非移民在线签证申请表，便于申请人查看中文问题，在检查期间及填写完毕后打印或保存中文版问题。
- 美国公民及移民服务局应减少对永久居民外派工作的障碍，允许回美申请者在美公民和移民服务局的国际办公室安排生物识别指纹录入。
- 在北京建立全球入境登记中心。

- Consider eliminating age restrictions in applications for work authorization from category B applicants in line with category A applicants, and eliminating work experience requirements for applicants with a bachelor's degree or above, if they possess outstanding skills or talent.
- Shorten the holding time for passports by the local PSB to five working days nationwide during the processing of residence permits.
- Allow family members to retain their residence permits until expiration upon reasonable grounds, if the foreign employee (principal applicant) cancels his/her work permit and residence permit due to early termination of employment in China.
- Consider a review of internship policies.

#### *For the US Government:*

- **Congress should abolish discriminatory per-country caps on employment-based green cards.**
- Congress should review the current H-1B and Green Card policies to bring them more into line with modern global corporate mobility requirements.
- The Secretaries of State and Homeland Security's implementation plan for EO 13597 should address how the US Mission in China can continue to provide short waiting times for appointments with non-immigrant visa applicants, including opening the Wuhan Consulate for non-immigrant visa interviews and adding at least four additional visa-issuing locations in China.
- The State Department should redesign the online Form DS-160 Nonimmigrant Visa Application by making it easier to read the questions in Chinese, as well allowing applicants to print or save the questions in Chinese at the review stage and once the form is finalized. Further, CBP's EVUS registration process should not ask travelers to the US to disclose the social media platforms and handles they use.
- USCIS should reduce barriers to permanent residents taking assignments abroad with US companies by allowing re-entry permit applicants to schedule biometrics appointments at USCIS offices abroad.
- Establish a Global Entry Enrollment Center in Beijing.

Part Three:  
Industry-Specific Issues  
具体行业问题



# Agriculture

## Introduction

China's economy continued to grow in 2017, with many Chinese citizens enjoying a higher standard of living. In line with this, there has been increased awareness about food safety, and more importance has been placed on minimizing food risks and identifying sustainable means of achieving this goal.

At the 19th CPC National Congress it was proposed that China's development over the next 30 years be gradual and sustainable. Rural governance, the rural populace and the continued modernization of agriculture will play crucial roles in efforts to meet this aim. China's agriculture is now at a crucial stage of supply-side structural reform. Moreover, the government's efforts at poverty reduction and improving environmental protection will also have a direct impact on agricultural development.

In recent years China's agricultural policy has reflected changes in the industry, such as initiatives ranging from rural finance to land trusteeship. Agriculture is, more pertinently, undergoing modernization through new agricultural machinery and decreased application of chemical fertilizers and pesticides. China's agricultural policies have accordingly addressed such modernization.

Agriculture Forum member companies believe they offer Chinese agriculture strong partnerships that can support efforts to achieve these goals and are very willing to work with Chinese partners.

The ties between the Chinese and US agricultural industries are positive, with much goodwill between the trading partners. Most recently, China lifted its ban on American beef in 2017, allowing Chinese consumers a broader choice of beef products.

Agricultural trade between China and US also continues to be successful. US companies exported agricultural products to China in 2017 valued at US \$22 billion. According to the US Trade Representative, US goods and services trade with China totaled an estimated US \$648.2 billion in 2017. Exports were valued at US \$169.3 billion, while imports were valued at US \$478.9 billion. The US goods and services trade deficit with China was US \$375 billion in 2017.

US-China trade during 2017 remained strong. The US continued to import large volumes of Chinese products and remained the largest importer of Chinese goods with imports valued at US \$565 billion.

AmCham China intends to work together with the Chinese and US agricultural industries and help China achieve its goals of agricultural modernization and producing food that is more affordable, healthier and sustainable for Chinese consumers.

## Ongoing Regulatory Issues

### Seed Industry

#### Restrictions to Foreign Investment in Seed Biotechnology

Since 2004, the Guiding Catalogue on Foreign Investment in Industry has been revised every two to three years. Compared with the 2015 version, the total number of restrictions have been reduced from 93 to 63 items. However, despite such reforms, "Transgenic Seed Business" remains in the Prohibited Category. AmCham China believes that once China begins to approve local cultivation of transgenic crops in addition to cotton, this restriction will discriminate against foreign-invested companies, including their joint ventures. This is especially likely given AmCham China's recent acquisition of Syngenta. AmCham China members believe these restrictions will also limit competition and efficiency, hinder the pace of innovation, and block Chinese farmers' access to biotechnology tools and crops. AmCham China urges the Chinese government to lift this restriction or move "transgenic seeds business" from the "prohibited" to the "restricted" category as an interim step.

#### Import and Export of Seed and Breeding Materials

In 2017, AmCham China saw continuous improvement in China's crop variety registration following the amendment of the Seed Law in 2016. However, significant changes to regulations on the import and export of seed and breeding materials are necessary to streamline lengthy and complex approval processes.

# 农业

## 引言

**中**国经济在 2017 年继续发展，中国公民享受着更高的生活水平，越发意识到食品安全的重要性，更加重视降低食品安全风险并找到实现这一目标的长久办法。

中国共产党第十九次全国代表大会提出，中国未来 30 年的发展应该是循序渐进的，可持续的。农村治理、农村人口和农业的持续现代化将对努力实现这一目标发挥关键作用。中国的农业正处于供给侧结构性改革的关键阶段。此外，中国政府为消除贫困和改善环境保护所做出的努力将对农业发展产生直接影响。

近年来，中国的农业政策反映了该行业的变化，包括农村金融到土地托管等措施。通过新的农业机械和减少化肥和农药的使用，农业现代化在更有针对性。而中国的农业政策相应地解决了这种现代化问题。

农业论坛成员公司相信，他们为中国农业提供了强大的合作伙伴关系以支持实现这些目标的举措，并愿意与中方合作伙伴合作。

中美农业行业的关系是积极的，同时贸易伙伴之间有着良好的意愿。中国在 2017 年解除美国牛肉禁令后使中国消费者有更广泛的牛肉产品选择。

中美之间的农业贸易继续保持成功，2017 年美国企业对华农产品出口高达 220 亿美元。根据美国贸易代表办公室，2017 年美国对华商品和服务贸易总额估计为 6482 亿美元。出口 1693 亿美元；进口 4789 亿美元。美国商品和服务贸易逆差在 2017 年达到 3750 亿美元。

中美贸易 2017 年保持强劲，美国继续大量进口中国产品，继续作为中国商品最大的进口国，今进口货物价值高达 5650 亿美元。

中国美国商会（商会）愿意与中美农业行业合作，以帮助中国实现农业现代化，为中国消费者提供更实惠，更健康，更可持续的食品。

## 现存监管问题

### 种子行业

#### 限制外资投资种子生物技术

自 2004 年以来，《外商投资产业指导目录》每两到三年修订一次。与 2015 年的版本相比，限制的总数已从 93 个减少到 63 个。然而，尽管有以上改革，“转基因种子业务”仍然处于禁止类别。商会认为，一旦中国开始批准在当地种植棉花以外的转基因作物，这种限制将歧视外国投资公司及其合资企业，特别是考虑到中国化工近期收购了先正达公司，更增加了这一可能性。商会会员认为，这些限制也会限制竞争和效率，阻碍创新步伐，限制中国农民获得生物技术工具。商会促请中国政府取消这一限制，作为临时措施，将“转基因种子业务”从“禁止”转向“限制”类别。

#### 种子和育种材料的进出口

2017 年，商会注意到，自 2016 年《种子法》修订以来，中国在不断改进作物品种登记。然而，当前的种子和育种材料进出口制度仍亟待重大改革，以改变冗长且复杂的审批程序。

例如，如果某出口种质中使用了中国原产种质，那么该项出口将受到严格限制。即使未使用原产种质，为研究目的而进行的种子出口审批程序也过于复杂，特别是对于育种基地遍布全球的跨国公司，每一种作物和每一份样品都需要完成多道审批程序。申请和审批程序缓慢冗长，批准率非常低，且审批过程也很模糊。在某些情况下，需要农业部授权的实验室检测报告，这进一步增加了公司的负担，减缓了种子品种的研发速度。

Germplasm exports from China are prohibited if domestic germplasm is used. Even when domestic germplasm is not used, exporting seeds for research purposes is overly complicated, particularly for multinational corporations (MNCs). The application and approval procedure are lengthy and protracted, and is characterized by very low approval rates in an unclear review process. In some cases, lab testing reports authorized by the Ministry of Agriculture (MOA) are required, further increasing companies' workload and hindering the development of seed varieties.

Meanwhile, the general import process requires approvals from multiple authorities in provincial seed administration agencies as well as MOA, in addition to obtaining phytosanitary certification and permits (AQSIQ). Such approval process slows down technology exchange and research cooperation between MNCs and the local seed industry, hampering new variety development.

AmCham China was encouraged by the joint seed movement pilot project begun in 2017 between MOA, quarantine agencies, and local and US seed companies supported by the China National Seed Association and the American Seed Trade Association.

## **Agrochemical Industry**

### Issues related to the Implementation of the New Regulations

The newly revised "Regulations on Pesticide Management" were officially implemented on June 1, 2017, beginning a new phase in pesticide management. AmCham China members believe the newly revised regulations will reduce the backward production capacity of pesticides, address surface pollution, and improve the pesticide utilization rate.

However, in implementing the newly revised regulations, AmCham China members have encountered two critical challenges:

- ❶ The approval and registration procedure for active ingredients in the patent protection period results in frequent infringement of patented pesticides. Without a management system in which patent rights are considered at early stage in patent disputes, patent holders cannot bring patent infringement litigation until the infringing products are marketed or seized. This is especially because of the difficulty of setting up a comprehensive supervision over the production and circulation of infringing products. AmCham China therefore urges MOA to issue a new policy for pesticide active ingredient's analogues.
- ❷ Regarding the mutual acceptance of data (MAD), China has accepted and approved overseas GLP-based test reports since the implementation

of a pesticide registration system. AmCham China members urge MOA to include willing and qualified overseas GLP laboratories in its list of recognized test institutes. In the interim, overseas pesticide creation companies should continue to communicate with the Organization for Economic Cooperation and Development (OECD), and other international organizations and pesticide authorities in the US, Germany and Japan to accelerate the international mutual recognition of GLP test data in China.

## **Intellectual Property Protection (IPR)**

China continues to promote an innovation-driven society. In line with this, several reforms have been made to improve IP protection, such as introducing specialized Intellectual Property Courts, the revision of the Trademark Law and the Patent Law, and the incorporation of the Plant Variety Protection (PVP) concept into the Seed Law. Breeders are encouraged to apply for PVP rights through the inclusion of more crops in the PVP list. Accordingly, an increasing number of breeders, including PVP right owners of non-major crops, have applied for PVP rights and sued infringers in court. The trend indicates a greater awareness of PVP and its power to protect innovation.

AmCham China encourages MOA to speed the examination process for PVP rights to encourage more breeders to apply, and for courts to impose more equitable penalties against PVP infringements.

AmCham China members also urge the provision of more IP tools for improved, comprehensive protection of innovations, especially in the following ways: PVP regulations should include more crops, Essentially Derived Varieties (EDV) and protection of the harvested material; proper patent rights should be granted to innovative biotech products which are not individual plant varieties to encourage innovation in traits; trade secret protection should be applied to germplasm; molecular detection methods should be introduced; and a seed company IPR credit system should be built up to enhance PVP enforcement.

## **Agricultural Processing and Transportation**

### Industry Integration and Modernization

China's agricultural and food processing industries are highly fragmented, hampering food safety supervision. Consolidation through mergers and acquisitions will help to modernize the industry and also facilitate food safety supervision.

AmCham China was encouraged by MOFCOM's introduction of a simplified anti-trust filing procedure for mergers and acquisitions meeting pre-specified criteria. This has substantially facilitated industry consolidation.

同时，一般进口流程要求获得多个省级种子管理机构和农业部的批文，获得植物检疫证书和许可证（国家质量监督检验检疫总局）。这一批准过程延缓了跨国公司与中国地方种子行业之间的技术交流和科研合作的步伐，也阻碍了新品种研发。

从2017年开始，商会很高兴地看到由中国种子协会和美国种子贸易协会赞助的农业部，检疫机构、当地种子公司和美国种子子公司之间的联合种子运动。

## 农药行业

### 新规定实施相关问题

2017年6月1日新修订的《农药管理条例》已正式实施，开辟了农药管理的新阶段。商会会员相信新修订的《农药管理条例》将减少中国农药的落后产能、解决农药面源污染、提高农药利用率。

然而，在新修订《农药管理条例》实施过程中，商会会员企业遇到了两个严峻的挑战：

- ❶ 尚在专利保护期内的有效成分的审批登记流程导致专利农药侵权案件频发。由于未引入与专利权相关的管理制度来解决早期专利纠纷，专利持有人在侵权产品上市或查获之前不能提起专利侵权诉讼。特别是由于难以对侵权产品的生产和流通进行全面监督。因此，商会敦促农业部颁布农药活性成分类似物的新政策。
- ❷ 自实行农药登记制度以来，中国一直接受和认可境外 GLP 试验报告。商会会员促请农业部考虑通过一视同仁的审查原则，将有意的合格的境外 GLP 试验室纳入农业部认定的试验单位名录中。与此同时，各境外农药创制公司应继续与经济合作与发展组织 OECD 及美国、德国、日本等国际组织和国家政府农药管理部门沟通，推动加快中国 GLP 试验数据的国际互认。

## 知识产权保护

中国继续在推动建设创新型社会并为此，进行了一些改革，以改善知识产权保护，例如引入专门的知识产权法院，修改商标法和专利法，并在种子法中引入植物新品种保护概念。政府鼓励育种者通过扩大植物新品种保护名录来申请植物新品种权利。相应地，包括非主要农作物植物新品种权所有者在内的越来越多的育种者递交植物新品种申请或对侵权行为提起诉讼。这一趋势表明有更多的育种者开始了解植物新品种保护系统并运用它保护自己的创新成果。

商会建议农业部加速植物新品种权利审批流程，从而鼓励更多育种者递交申请，使法院对 PVP 侵权行为进行更公平的处罚。

为了更好地、更全面地保护创新，商会会员敦促提供更多的知识产权工具。特别是在以下几个方面：❶ 植物新品种保护条例应扩大保护名录，引入实质派生品种概念并将新品种保护权利延伸至收获后的作物材料；❷ 向创新生物技术产品而非单一植物品种授予恰当的专利权，鼓励并促进在性状方面的创新；❸ 将保护商业秘密应用于种质资源；❹ 应引入分子检测方法。❺ 应建立种子知识产权信用体系，加强公司植物新品种执行。

## 农产品加工和运输

### 行业整合和现代化

由于中国的农业和食品加工业高度分散，阻碍了食品安全监管。通过合并和收购进行整合将有助于工业现代化并促进食品安全监管。

商会高兴地看到，商务部引入了一个简化的合并与收购反垄断备案程序，以满足预先规定的标准，这极大地促进了行业整合。

然而，《反垄断法》提供的报告门槛较低，继续阻碍着合并。按照当前的报告要求，许多对市场影响不大的小案件仍然需要通过合并审查，增加了交易的成本和时间。

此外，《反垄断法》还要求执法机构考虑超出传统反垄断分析范围的因素。因此，商务部的分析经常涉及到与反垄断无关的问题，耽误了审查进程。

### 粮食来源

在2017年“指导外商投资目录”中，中国取消了此前对农业加工的所有限制，以及对作物来源的一些限制，进一步开放了农业部门。

商会对这些持续的市场开放努力表示欢迎，但对外国投资者来说，大米，小麦和玉米来源的限制依然存在。这将不利于农业部门的现代化，而取消这些限制使国际公司能够把整个农业价值链运作的宝贵经验和技能引进中国，加强国内行业发展和现代化。

### 散货运输

中国省际之间的粮食运输仅有百分之二十五是通过散货运输，这表明未能使用中国世界一流的现代化港口、仓

However, the low filing threshold provided by the Anti-Monopoly Law (AML) continues to hinder consolidation. Under the current filing requirement, many small cases with insignificant market impact are still required to undergo merger review, increasing the cost and time of transactions.

In addition, the AML requires enforcement agencies to consider elements that are beyond the scope of classic antitrust analysis. As a result, extraneous issues often color MOFCOM's anti-monopoly analysis and delay review.

### Grain Origination

In the 2017 Catalogue Guiding Foreign Investment, China opened the agricultural sector further by removing all previous restrictions on agricultural processing and certain restrictions on crop origination.

AmCham China welcomes the increasing market opening efforts. However, the restriction on the origin of rice, wheat and corn still applies to foreign investors. This is detrimental to the modernization of the agricultural sector. The removal of such restrictions would enable international companies to introduce their valuable experience and expertise operating the whole agricultural value chain to China, thereby enhancing the domestic industry's development and modernization.

### Bulk Transportation

Only 25 percent of cross-provincial grain movement in China is handled in bulk, indicating a failure to utilize China's modern, world-class ports, silos, and railways. If China were to reduce restrictions and open grain trading and logistics investments to all investors, large and efficient grain distributors could operate, reducing the cost of grain and food.

Low-cost, integrated logistics solutions could become available, if China were to lift its state-owned enterprise monopolies on infrastructure such as railways and ports. AmCham China members are willing to share their experience with their Chinese counterparts in order to help implement such solutions.

### **Agricultural Commodity Trade**

#### Regulatory and Permit Issues on Commodities with Biotech Traits

AmCham applauds the US-China government 100-day plan on biotech product safety approvals, in which 4 of 8 pending products gained China regulatory clearance for trading. However, as of November 2017, 10 products still awaited final safety approvals. Such delays in the approval of biotech commodities increase the risk of trade disruptions and retard global agricultural innovation.

The "Genetically Modified Organism Safety Assessment Measures" were amended in 2016. AmCham China was

encouraged by MOA's transparency and openness to public and trade partner input. However, the amended decree removed submission windows and feedback timelines, which raised concern that such changes could make the process less predictable.

In 2017, several new amendments to existing regulations or administrative requirements were also issued. These removed in-country studies as a precondition for applying for import safety certificates, and also removed application and trial fee requirements for biotech product import approvals. AmCham China members welcome the Chinese government's intention to reduce the administrative and financial burden on companies. However, when such amendments are made without a clear transition period or implementing rules, they add significant uncertainty to the regulatory process and cause disruption. AmCham China encourages MOA to clarify the changes to the regulatory process arising from such amendments and set up a reasonable implementing rule after seeking input from all stakeholders, including technology developers.

In addition to acquiring a safety certificate on biotech products, MOA also requires agricultural traders to obtain a biosafety certificate for each specific shipment to each customer. AmCham China members were encouraged by MOA's recent initiative to remove the application fee of RMB 3,000 that was previously required for certificate filing. However, further improvements could make the certification process more transparent and predictable. AmCham China noticed an increased rejection rate for biosafety certificate applications filed by agricultural traders. Such inconsistency and unpredictability create uncertainties for the trading business. As such, AmCham China urge MOA to provide a clear set of rules and criteria to guide document preparation for this application process.

GMO Low-Level Presence (LLP) is a globally-adopted standard for commodity trading. China, however, adheres to a zero-tolerance policy. This increases trade risks, given the difficulty of ensuring total product purity along a long, complicated supply chain that includes farming, harvesting, storing, and truck, rail and sea transportation. This also increases the cost of grains for protein producers and Chinese consumers. Adopting the LLP policy in China would reduce risks to Chinese companies arising from the uncertainty involved in the grain trade. It would also lead to lower prices, as such policy decreases the risk of rejection that would normally need to be covered in the price. AmCham China urges a review of all applicable global trade rules and that reasonable rules be applied across all sectors to facilitate free and open trade.

### Feed Import Approvals

Feed additives and ingredients exported to China for the first time are required to undergo a government approval process that involves product registration by MOA and

库和铁路。如果中国能够减少限制，向全体投资者开放粮食贸易和物流投资，高效的大型粮食经销企业就能运作并减少粮食和食物的成本。

如果中国能够取消国有企业对铁路和港口等基础设施的垄断，低成本的综合物流解决方案就会成为可能。商会的会员企业愿意与中国同行分享自己的经验，以帮助实施这些解决方案。

## 农产品贸易

### 具有生物技术特征的商品的监管和许可问题

商会赞赏中美政府的生物技术安全证书审批 100 天计划。在 8 个等待批准的产品中，有 4 个获得了中国监管部门的批准。然而，截至 2017 年 11 月，仍有 10 种产品等待最终的安全审批。生物技术产品审批的延误增加了贸易中断的风险，放缓了国际农业创新步伐。

《农业转基因生物安全评价管理办法》于 2016 年修订。商会欢迎农业部对公众和贸易伙伴的意见和建议秉持透明和开放的态度。然而，修订后的管理办法取消了提交窗口和反馈期限，人们担心这些修改将使现有制度不可预测。

2017 年，中国政府还颁布了对现行法规或行政要求的若干新修订。这些修订取消了国内研究作为申请进口安全证书的先决条件，并取消了生物技术产品进口批准的申请和试用费要求。商会成员欢迎中国政府减轻公司行政和财务负担的意图。但是，如果修订没有明确的过渡期或实施规则，会给监管过程带来重大的不确定性并导致混乱。商会鼓励农业部澄清此类修改引起的监管过程的变化，并在征求包括技术开发商在内的所有利益相关方的意见后制定合理的实施细则。

除了获得生物技术产品的安全证书外，按照农业部的要求，农产品贸易商还需要为同一个产品每批次进口的每个客户重新取得生物安全证书。商会成员很高兴地看到农业部最近的一项举措，即取消之前要求的 3000 元人民币的申请费。然而，认证过程的透明度和可预测性仍有待改进。商会注意到近期农产品贸易商提交的生物安全证书申请的拒绝率最近有所上升，这种不一致和不可预测性给交易业务带来不确定性。因此，商会敦促农业部提供一套明确的规则和标准来指导该申请流程的文件准备工作。

转基因生物低程度存在 (LLP) 是全球采用的商品交易标准。然而，中国的零容忍政策增加了贸易风险，因为通

过包括农业，收割，仓储，卡车和轨道交通以及海运在内的漫长而复杂的供应链，无法确保 100% 纯度，这也增加了蛋白质生产者和中国消费者的粮食成本。在中国采用 LLP 政策将降低由于粮食贸易的不确定性对中国企业造成的风险。这也会降低通常需要包含在价格中的禁入风险。商会敦促中国审查所有适用的全球贸易规则，并在所有部门适用这些理性规则，以促进自由和开放贸易。

### 饲料的进口许可

饲料添加剂和原料首次出口到中国需要经过政府审批程序，其中饲料原料登记在农业部，产品安全性评估和出口商登记在国家质检总局（现已划归为国家市场监督管理总局）。这个过程很复杂，可能需要几年的时间才能完成，而且对改善食品安全没有什么作用，经常阻碍中国食品生产者使用新技术，例如抗生素替代品，从而增加食品安全风险。

### 对美国干玉米酒糟征收反倾销和反补贴税

2017 年 1 月，商务部对美国所有的干玉米酒糟出口商征收了 49.8%–53.7% 的反倾销税和 11.2%–12% 的反补贴税。这些关税加上 11% 的增值税和 5% 的进口关税，累计进口关税超过 80%，这几乎消除了中国对美国干玉米酒糟的进口。

对美国干玉米酒糟的封锁，本质上是以中国动物饲料和畜牧企业为饲料原材料支付更高的价格为代价。

商会对中国政府 2017 年 12 月 20 日所做的一项决定表示欢迎，即中国对干玉米酒糟的进口免征增值税，这降低了进口美国干玉米酒糟的整体税收负担。然而，由于反倾销和反补贴税仍在征收，美国干玉米酒糟的常规进口想再恢复不太容易，因此增加了在中国生产蛋白质的成本。

### 农产品关税配额

棉纺厂，制糖厂和饲料厂等中国生产企业高度依赖进口以维持企业经营的全球竞争力。为了保护农民和满足进口需要，中国在入世谈判时对主要农作物实施关税配额管理制度 (TRQ)。但是，若干问题阻碍了关税配额制度实现这两项政策目标，其中包括：

- 关税配额水平自 2001 年中国加入世界贸易组织之后就未作过调整，无法满足中国对农产品日益增长的需求。
- 绝大多数进口配额都留给了国有企业。私有企业能获

product safety evaluation and exporter registration by AQSIQ. This process is complicated and can take years to complete. It also does little to improve food safety, and more often blocks Chinese food producers from utilizing new technology, such as alternatives to antibiotics, thereby increasing risks to food safety.

### Anti-Dumping and Countervailing Duties on US DDGS

In January 2017, MOFCOM imposed anti-dumping duties of 49.8-53.7% and countervailing duties of 11.2-12% on all US distiller's dried grains with solubles (DDGS) exporters. These together with an 11% value-added tax and a 5% import tariff led to an accumulated import duty of over 80%, which almost eliminated China's import of US DDGS.

The blockage of US DDGS was essentially at the cost of China's animal feed and livestock producers who are now paying more for their feed raw materials.

AmCham China welcomes the decision by the Chinese government to exempt value-added tax for DDGS imports as of December 20, 2017, reducing the overall tax burden of imported US DDGS. However, given that thereby anti-dumping and countervailing duties remain in place, regular imports of US DDGS cannot easily be resumed, thereby increasing the cost of producing protein in China.

### Tariff Rate Quota on Agricultural Commodities

Chinese processors including cotton spinning mills, sugar refineries, and feed mills rely heavily on imports to keep their operations globally competitive. China introduced a tariff rate quota (TRQ) system on major crops during its WTO entry negotiations in order to protect its farmers and meet its import needs. However, a number of issues prevent TRQs from supporting these two policy objectives, including the following:

- TRQ levels have not been adjusted since China's accession to the WTO in 2001 and do not meet increasing demand.
- A majority of import quotas are reserved for state-owned enterprises. The TRQ volume allocated to each private applicant is often too small to be commercially viable for making even a single shipment.
- A lack of transparency in the administration of TRQs inhibits efficient utilization of quotas and increases the cost of agricultural trade.
- Quota distributions are unpredictable and often at odds with the needs of the market.

AmCham China recommends that the Chinese government regularly review TRQ levels according to actual market demand and establish a more transparent and market-oriented TRQ allocation system. AmCham China members

hope that the Chinese government can publicize the criteria of TRQ application for private sectors, and that both domestic and foreign-invested companies are able to apply for quotas. AmCham China members also recommend reducing the number of agricultural commodities subject to TRQs, particularly feed grains, so that market demand can be met more efficiently, allowing China access to less expensive agricultural commodities.

### Import Duties for Ethanol

In January 2017, China suspended its preferential tax policy on ethanol imports, raising the tariff rate for denatured ethanol from 5% to 30%. As a result, China's total ethanol imports from the US fell from 179.2 million gallons in 2016 to close to zero in 2017.

Ethanol import can supplement China's domestic ethanol supply and help to promote ethanol blending for the auto sector. As such, AmCham encourages the Chinese government to remove the high import tariff on denatured ethanol.

### Beef and Pork Trade

There are significant opportunities for increasing beef and pork trade between the US and China. These will allow increasingly affluent Chinese consumers to access high-quality, safe, and nutritious red meat products at a lower price.

New demand and constrained domestic beef supplies have led to an increase in China's beef imports. Between January and September 2017 imports totaled 519,849 tonnes, a 14.3 percent increase from 2016. Per capita beef consumption is also growing, and China has emerged as the largest growth market for global beef suppliers.

Following negotiations in late spring 2017 on an import protocol for US beef, US beef from China-compliant cattle harvested on or after May 24, 2017 became eligible for export to China. Shipments resumed a month later, and by mid-November 2017 US shipments had exceeded 1,000 tonnes. Shipments have been minimal owing to China's import requirements specifying that beef shipped to China may not contain residues of US-approved growth promotants, feed additives, or other chemical compounds including ractopamine, which are prohibited by China's law and regulations. US farmers and ranchers are encouraged by the new access conditions, but also look forward to future discussions on the safety of US cattle production technologies.

The value of US pork exports to China fell by just under 14% for the period January to September 2017 after record exports last year. China's zero tolerance for ractopamine is not in line with international guidelines on safe residues for this feed additive. As such, the US pork industry looks forward to further dialogue about safe production technologies.

得的关税配额额度过小，甚至无法满足一次进出口贸易的需求。

- 关税配额管理缺乏透明度，抑制了配额使用的效率并增加了农业贸易成本。
- 配额分配缺乏可预测性，经常与市场的实际需求不符。

商会建议中国政府根据市场实际需求定期评估关税配额水平，并建立更加透明、以市场为导向的关税配额分配制度。商会会员希望中国政府能够公开私营部门的关税配额申请标准，国内和外资公司都可以申请配额。同时商会会员还建议减少需要配额的农产品数量，特别是饲料谷物，从而更加有效地满足市场需求，使中国能够享用到价格更加实惠的农产品。

## 乙醇进口关税

在2017年1月，中国暂停了对乙醇进口的优惠税收政策，将变性乙醇的关税税率从5%提高到30%。因此，中国从美国进口的乙醇总量从2016年的1.792亿加仑降至2017年的零加仑。

乙醇进口可以补充中国国内的乙醇供应，并有助于促进汽车行业乙醇混合燃料的使用。因此，美国商会鼓励中国政府取消对变性乙醇的高额进口关税。

## 牛肉和猪肉贸易

中美牛肉和猪肉贸易存在巨大的提升空间。这将使富裕的中国消费者获得物美价廉、安全和有营养的红肉产品。

新的需求和国内有限的牛肉供给，使中国牛肉进口增加。2017年1月至9月，中国总计进口冷冻、新鲜和冷鲜牛肉519,849公吨，与2016年相比增长了14.3%。人均牛肉消费量也持续增长，中国已经成为全球牛肉供应企业增长最快的市场。

在2017年春末美国牛肉进口协议的谈判后，在2017年5月24日或之后生产的，符合中国要求的美国牛肉获准出口至中国。一个月之后，美国牛肉发货量恢复，截至2017年11月中旬，美国的发货量已超过1000公吨。根据中国的进口要求，发货量为最低限度，且规定运往中国的牛肉不含美国批准的生长促进剂、饲料添加剂或其他化学物质，包括莱克多巴胺，这些均被中国法律法规禁止。新的准入条件令美国农民和牧场主备受鼓舞，同时他们也期待未来能有关于美国牛肉生产技术安全性的讨论。

在去年出口创纪录后，美国对华猪肉出口在2017年1月至9月期间下降了不到14%。中国对莱克多巴胺的零容忍政策与国际上对这种饲料添加剂安全残留物的指导方针并不一致，美国猪肉业期待未来的安全生产技术对话。

两国猪肉贸易面临的其他贸易壁垒包括限制进口美国冷冻猪肉以及目前禁止进口美国加工肉类产品。商会鼓励中美两国政府就美国加工肉类出口资格达成一致，使得中国消费者能够获得更多安全价优的猪肉产品。最后，商会会员期待与中国就美国羊肉和羊肉制品贸易开启协商。

商会会员承认，中国同行也提出，中国的某些肉类/家禽产品在美国市场也面临类似的市场准入难的问题。为了进一步提升中美农业贸易更好的、互惠的发展，商会促请美国相关监管部门允许美国消费者能够获得更多的安全食品，审批中国肉类、鱼类和熟制家禽产品的市场准入申请。

## 农业机械

### 农机补贴

自2004年起，受相关补贴和优惠政策的刺激，中国的农用机械销售额迅速增长。商会特别赞赏2018年发布的新补贴政策，该补贴政策根据世贸组织国民待遇原则将进口农业机械列入补贴清单，这提高了中国农民的效率。鉴于省级农业部门可以根据当地情况更加自主和灵活地执行补贴政策，各省的补贴政策不尽相同。因此，生产者与各个省份合作时必须遵循不同政策。商会建议主管部门可以鼓励各省实施统一的补贴政策，以促进健康的商业环境，提高农业效率。

### 中国制造2025

外资企业已经成为中国经济不可分割的一部分。因此商会促请中国政府，在执行“中国制造2025”时，能够对所有产业主体一视同仁，提供公平竞争的机会。为外资企业提供平等机会享受诸如研发资金、产品补贴等项目支持。只有在平等自由的市场平台中竞争，中国才能顺利实现跻身制造业强国行列的目标。

### 排放法规

商会支持中国政府继续为非道路机械制定更加严格的排放标准。商会会员促请国四排放标准能够尽早颁布，使行业有足够的时间来满足更严格的排放标准，至于农业机械，在制定国四排放标准的实施日期时，政府应将农作物收获季节考虑进去。



Other impediments to pork trade between the two countries include unclear restrictions on the import of US chilled pork and a ban on US processed meat imports. AmCham China encourages the US and Chinese governments to engage on US processed meat export eligibility in order to give Chinese consumers access to a greater range of safe and affordable pork products. AmCham China members also look forward to beginning discussions on establishing trade in US lamb and sheep meat products.

AmCham China members acknowledge that their Chinese counterparts have also voiced concerns about market access for certain Chinese meat and poultry products in the US. To promote better and mutually beneficial trade, AmCham China urges US authorities to allow American consumers access to a greater range of safe food, and to review Chinese requests for US market access for meat, fish, and cooked poultry products.

### *Agricultural Machinery*

#### *Agricultural Machinery Subsidy*

Since 2004, sales of agricultural mechanization equipment in China have grown rapidly. This has been driven by relevant subsidies and other favorable policies that have resulted in improved efficiency of Chinese farmers. AmCham China particularly appreciates the new subsidy policy released in 2018, which added imported agricultural machinery to the subsidy list, in line with WTO national treatment principles. Given provincial agricultural authorities have more autonomy and flexibility regarding subsidy implementation based on local conditions, subsidy policies differ from province to province. As a result, manufacturers must work with all provinces which enforce varying policies. AmCham China recommends that authorities encourage consistent policy recommendation at the provincial level, in order to foster a healthy business environment and improve farming efficiency.

#### *Made in China 2025*

MNCs have become an integral part of China's economy. Accordingly, AmCham China urges the Chinese government to treat all industrial entities equally and provide a level playing field when implementing "Made in China 2025." MNCs should enjoy equal opportunities in project support, such as R&D funding and product subsidies. China will only successfully achieve its goal of becoming a top manufacturing power if it competes on a free and level playing field.

#### *Emission Regulation*

AmCham China supports the Chinese government's continuing efforts to develop more stringent emission regulations for non-road machinery.

AmCham China members urge early announcement of the "Non-road 4 Emission Regulation" to allow industry suffi-

cient time to plan how to meet the stricter emission standards. Regarding agricultural machinery, the government should take harvest season into consideration when setting the implementation date of NR4.

AmCham China also urges clear guidance for emission technology solutions and anti-tamper design requirements for manufacturers to prevent dealers and end-users from modifying the designs.

## Recommendations

### *For the Chinese Government:*

- **Improve the sustainability and competitiveness of Chinese agriculture by opening the industry up to foreign investment in seed technology, modern agricultural processing, and bulk transportation.**
- Establish a functional regulatory process for approving biotechnology-derived crop products in a timely manner, in order to encourage agricultural innovation, increase public confidence and acceptance, and avoid trade disruptions.
- Remove continued restrictions on the import of US beef and pork.
- Allow Chinese feed manufacturers access to affordable raw materials to enable Chinese protein producers to be globally efficient.
- Encourage the consistent implementation of agricultural equipment subsidy across provinces in order to increase efficiency and accommodate the harvest season when setting the implementation date of NR4.

### *For the US Government:*

- **Work with Chinese officials through any official or unofficial bilateral dialogues to address trade and investment restrictions faced by US agricultural producers.**
- Consider Chinese requests for market access for meat, fish, and produce, including cooked poultry, apples, pears, and catfish in a fair and reciprocal manner.

商会也促请给制造商提供排放技术解决方案和防篡改设计要求的明确指导，防止经销商和最终用户对设计进行修改。

## 建议

### 对中国政府：

- 允许外资投资种子技术、现代农业加工和粮食散货运输，从而提高中国农业的可持续性和竞争力。
- 建立实用的监管过程，及时审批基于生物科技的作物产品，从而鼓励农业创新，提高公众信心和认可，避免贸易出现中断。
- 取消对美国牛肉和猪肉的持续进口限制。
- 允许中国种子生产企业获得价格实惠的原材料，使中国粮食生产企业保持国际领先的效率。
- 鼓励农业设备补贴和认证管理政策在各省得到统一执行，以提高效率。在制定国四排放标准的实施日期时，要考虑到收获季节。

### 对美国政府：

- 通过官方和非官方两种双边对话平台与中方官员合作，解决美国农业企业所面临的贸易和投资限制。
- 采用严格的方法，评估中国的肉类、鱼类和其他农产品（包括熟制禽肉、苹果、梨和鲶鱼）的美国市场准入要求。

# Automotive Industry

## Introduction

China's automotive industry has witnessed rapid development and has ranked first in the world for each of the past eight years, with production and sales volume exceeding 28 million vehicles in 2016 alone. Significant progress has also been made in the development of new energy vehicles (NEVs). In 2016, production and sales volume surpassed 500,000 NEVs, while the cumulative promotion volume exceeded one million vehicles, accounting for more than 50 percent of the global total. Regarding intelligent and connected vehicles (ICVs), several automotive products with driving assistance and networking features have now entered the market. At present, a new generation of technologies involving information and communication, the Internet and new energy are accelerating integration with the automotive industry. Substantial changes have taken place in the industrial ecology, with the result that, for example, the traditional fuel-engine-driven automotive industry will no longer exist in isolation.

China's "Medium and Long-term Development Plan of Automotive Industry" released in 2017 sets the development of NEVs, smart automobiles, and network development as the major directions for development of the country's automotive industry. The restructuring and upgrading of China's auto industry, and its transition from a large-scale industry to a strong one offer rare opportunities. However, the challenge of fuel consumption and emissions caused by fuel engines continues, and new problems are constantly emerging with the development of NEVs and ICVs. This is due not only to problems of technology, research, development and production, but also because current laws and regulations cannot be applied to the developmental challenges presented by the new ecology.

Given the important changes seen in the automotive industry, AmCham China urges the Chinese government to advance reform and improve governance in order to meet new opportunities and challenges better.

## Ongoing Regulatory Issues and Recent Developments

### *Policy Transparency, Predictability, and Coordination*

AmCham China hopes that the Chinese government will promote the healthy development of China's automotive industry, and innovation in and application of technology products, by supporting enterprises in the following respects.

Enterprises and the government work in a win-win or lose-lose relationship when formulating policies and standards. Enterprises are willing to face challenges with the government and share some of the pressure it faces. However, they also hope that the government will give more consideration to enterprises' views and demands. For example, the government could solicit the views of enterprises, including foreign-funded enterprises, more widely at earlier stages of drafting policies and standards. When soliciting public comments on drafts, it should also provide public feedback on the views surveyed. If the final version of the policy includes any new content, the government should inform the public in advance and again solicit public comment.

AmCham China urges the government to devote more effort to the predictability, transparency and continuity of policies to avoid creating instability in the operation of enterprises, which will lead to higher R&D and production costs. Given the long cycle of development and production of automotive products, our members hope that the government will formulate and publish product-related policies and planning requirements at least three years in advance. When formulating policies, we urge the government to consider fully the industry's development level and the overall market environment, together with the actual production capacity of enterprises, in order to set a sufficient transition period for adjustments.

Given the subsidies for NEVs in the last few years, AmCham China suggests that the government not amend the technical standards for subsidized vehicles every year, as this is detrimental to product development planning and production.

Regulators should work to resolve inconsistencies in existing policies and technological developments. The

# 汽车制造业

## 引言

**中**国汽车产业快速发展，自 2009 年起已连续 8 年位居全球第一，2016 年产销突破 2800 万辆。新能源汽车发展也取得重大进展，2016 年产销量超过 50 万辆，累计推广量超过 100 万辆，全球占比均超过 50%。在智能网联汽车方面，一些具备辅助驾驶功能和网联化特征的汽车产品规模化进入市场。当前，新一代信息通信、互联网、新能源等技术与汽车产业加快融合，产业生态深刻变革，传统燃油发动机驱动的汽车产业不再是孤立的存在。

中国于 2017 年发布的《汽车产业中长期发展规划》将新能源汽车发展和汽车智能化、网联化发展定为中国汽车产业的主要发展方向。中国汽车产业转型升级、由大变强面临难得的历史机遇。与此同时，燃油发动机带来的油耗排放挑战仍然存在，而新的问题又伴随着新能源车和智能网联汽车的发展而不断涌现。这其中不但有技术、产品本身的研发和生产问题，更有现行法律法规不能适用于新生态发展变化所面临的挑战。

汽车产业发展出现深刻变化。中国美国商会（商会）敦促中国政府进一步深化改革，提高政府治理能力，更好地迎接新的机遇和挑战。

## 现存监管问题及最新进展

### 政策透明度、可预见性和协调性

为了中国汽车产业的健康发展，为了更好地促进技术产品的创新和应用，商会希望政府在以下几个方面给与企业更多的支持：

在政策和标准制订过程中，企业与政府实际上是一个共赢或共输的共同体。企业愿与政府一起面对挑战，分担政府的压力；同时也希望政府更加充分地考虑企业的意见和

诉求。例如，政策、标准草案起草前期阶段，能够广泛征求企业的意见，包括外资企业；在草案征求公众意见阶段，也应该对企业和公众提出的意见进行公开反馈，政策最终版本如有新增内容，也应提前告知公众并再次征求公众意见。

商会促请政府努力提高政策的可预见性，透明度和连续性，避免给企业运营带来不稳定性，从而增加研发和生产成本。考虑到汽车产品开发、生产的长周期性，商会会员希望政府至少提前三年制定并公布和产品相关的政策和规划要求。在制定政策过程中，商会促请政府充分考虑行业发展水平和市场总体环境，结合企业实际生产能力，给与足够的过渡期，让企业有充分的时间做出调整。特别针对新能源汽车补贴的最后几年时间里，商会建议政府不要每年修订补贴汽车的技术标准，这样不利于企业产品的开发和生产的规划。

监管机构应着力解决现有政策和技术发展的不一致。法律法规的更新和调整远远落后于技术产品的创新和发展。此外，智能网联汽车、自动驾驶技术等创新科技的发展不能因为过时的政策而放缓进程甚至止步不前。尤其汽车产业和互联网等产业已高度融合，跨界合作需要颠覆传统汽车行业的管理方式。各传统汽车行业主管部门之间，以及互联网等其他行业主管部门之间，需要在政策制定和执行过程中加强沟通和协调，共同推动行业创新和技术创新。商会建议政府本着技术中立的原则，把握最为关键的产品性能要素要求，给企业留出充分的创新空间，并创造一个宽松灵活的法规环境。

商会建议中国政府在政策制订和起草的早期阶段，对立法做充分论证和可行性研究，给与在华企业更多参与讨论、反馈意见的机会，让政策、标准符合市场需求，有利于行业的健康发展。考虑到汽车生产、技术升级为长周期产品，政策的制定和调整应以至少三年为一个周期。建议采取以下行动：① 尽早制定公布 2020 年以后的产业政策，如新能源车发展规划；② 建立汽车行业跨部门政策协调机

updating and adjustment of laws and regulations lags far behind the innovation and development of technical products. Moreover, the development of innovative technologies such as ICVs and automatic driving should not be slowed because of outdated policies. In particular, the automotive industry has become strongly integrated with the Internet and other industries, and cross-border cooperation means that the management methods of the traditional automotive industry should adapt. Departments in the traditional automotive industry, as well as departments in other industries such as the Internet, should strengthen communication and coordination in policy formulation and implementation in order to jointly advance industry and technological innovation. We suggest that the government adhere to the principle of technology neutrality, consider the most crucial performance requirements of products, give enterprises sufficient space for innovation, and create a relaxed and flexible regulatory environment.

AmCham China urges the Chinese government to conduct thorough analysis and feasibility research in the early stages of formulating and drafting policies and regulations. The government should provide enterprises with more opportunity to take part in discussions and provide input so that policies and standards can meet market demand and facilitate the healthy development of the industry. Considering that automobile production and technological upgrading require extended periods of time, policies should be formulated and adjusted on a three-year cycle at a minimum. Steps should be taken to do the following:

Formulate and publicize industrial policies after 2020 as soon as possible, such as NEVs development planning.

- Establish a cross-sectoral policy coordination mechanism for the automotive industry to jointly promote the development of innovative technologies.
- Enhance consistency between central and local laws and regulations.
- Further align policies with international best practices.

### *Emissions Standards*

In drafting Stage VI emissions standards, the government took full consideration of industry views and adopted some suggestions on implementation time and standard setting. Stage VI emissions standards for light-duty vehicles was released in December 2016. AmCham China understands the need to enforce stricter vehicle emissions standards with pollution controls in key regions, but does not support the measures by various local governments to introduce separate local standards. Our members instead urge that the national standard be implemented nationwide. Local environmental protection departments that implement the standard in advance should also issue an implementation announcement or notice at least a year in advance.

China is expected to begin implementing Stage VI emissions standards for heavy-duty diesel vehicles by 2020. Key cities and regions may also implement these ahead of schedule. Owing to the complexity of Stage VI emissions standards for heavy-duty diesel vehicles, the release of official standards has been slower than planned, and the postponement has led to insufficient time for the product preparation period. Given the time needed for product development verification, road testing and certification, AmCham China recommends that in regions with early implementation, enterprises should be given at least two years for product preparation from regulation release to official implementation.

In recent years, China has made progress in the formulation and implementation of fuel quality standards and has ensured the emissions upgrade of motor vehicles. In order to ensure the effective implementation of Stage VI emissions standards, the national sixth phase vehicle gasoline standard and vehicle diesel fuel standard were released in December 2016. However, regarding the actual supply of fuel, AmCham China notes that the quality of fuel supply varies across the country. For example, the quality of diesel fuel supply in some regions, especially remote areas, is far below the national standard, which can lead to increased rate of engine failure and more challenges to meet emission standards and other requirements. Our members recommend that the state maintain continuity and strictness in fuel supply and quality regulation. For example, it should promote the upgrading, renovation or closure and elimination of privately-owned enterprises, in addition to state-owned refineries, in order to ensure the effective implementation of emission standards.

After Stage VI emissions standards are published, our members urge the Ministry of Environmental Protection (MEP) to coordinate domestic testing organizations to formulate a unified and consistent testing and certification process.

AmCham China is encouraged by the fact MEP has used public environmental information to replace the environmental protection catalog. Our members hope the small-batch exemption measures in the Stage V standards can continue.

We also recommend that MEP and local environmental protection departments develop a unified and reasonable process and method to supervise and check product consistency. When the local departments' understanding and interpretation are inconsistent with policies in supervision and inspection, MEP should explain and coordinate the laws and regulations.

The current standard limits and tests for measuring fuel consumption by heavy commercial vehicles (Phase I and II) are required for the whole vehicle. Yet fuel economy of commercial vehicles is affected by various factors, including engine efficiency, vehicle weight, wind resistance, and rolling resistance. Vehicle fuel consumption tests limit the standard driving cycle, which differs from the actual operating cycle. Our members strongly recommend increasing engine test

制，共同推动创新技术的发展；③加强中央和地方法规的一致性；④进一步和国际最佳实践接轨。

## 排放标准

在起草国六排放标准的过程中，政府部门充分听取了行业的意见，在实施时间和标准技术要求设定方面都采纳了一些行业的建议。轻型车国六排放标准已于2016年12月发布，商会非常理解在污染物控制重点区域提前或者实施更为严格的排放标准的必要性，商会会员促请这些区域不再单独出台地方标准，而是统一实施国家标准，并且提前实施的地方环保部门应提前至少两年的时间发布实施通知或者公告。

中国预计在2020年内开始实施重型柴油车国六排放标准，重点城市和地区也有可能提前实施。由于重型柴油车国六标准的复杂性，正式标准的发布比计划有所延迟，推迟发布导致产品准备期的时间严重不足，考虑到产品开发验证、道路试验和认证的时间，商会建议提前实施地区从法规发布到正式实施至少给企业两年的产品准备期。

近年来，中国在燃油质量标准的制定和实施方面取得了成效并且保障了机动车的排放升级。为确保国六标准的有效实施，国家第六阶段车用汽油标准和车用柴油标准已于2016年12月发布，但是在燃油供应的实际情况上，商会注意到全国各地燃油供应的质量不一，例如有些地区柴油供应质量甚至远远低于国家规定的标准，尤其是偏远地区，这将造成发动机故障率提高，给满足排放标准和其他要求带来巨大挑战，等等。商会会员企业建议国家在燃油供应和质量的监管上保持连续性和严格性，例如除国有炼油企业外，大力促进民营企业的升级改造和淘汰落后等，这样才能确保排放标准得到有效实施。

国六标准发布后，商会会员促请环保部协调国内的检测机构制定统一一致的测试认证流程。

商会赞赏环保部用环保信息公开替代环保目录的做法，同时也希望延续国五排放管理中的小批量车型豁免办法。

商会建议环保部和地方环保部门制定统一和合理的流程和方法，以监督检查产品的一致性；当地方监督检查出现对政策的理解和解释不一致的情况下，环保部应当对法规进行解释和协调。

目前正在实施的重型商用车燃油消耗量测量方法（一、二阶段）的标准限值和测试都是对于整车提出要求。

商用车燃料经济性受到各种因素的影响，包括发动机效率、整车重量和风阻和滚动阻力。整车油耗测试限定了标准的驾驶循环，与实际操作循环存在差异。因此商会再次强烈建议增加发动机测试和燃料消耗量的限值，以及针对发动机燃料经济性要求的管理，确保当车辆的使用条件改变或初始安装的附加节能手段损坏或不能及时修复时，装用的发动机的高效率仍能得到保证。

## 新能源汽车政策

新能源汽车是中国的战略新兴产业之一，商会理解并支持中国政府加速向新能源汽车转型升级的目标，并希望在未来为中国新能源汽车产业的发展做出积极贡献。为此，我们提出以下建议：

### 保持激励政策的连续性和前瞻性

目前，新能源汽车市场尚未成熟，其生产与销售主要依赖补贴和限购城市给予新能源汽车牌照等优惠政策的支持。而车企进行产品开发通常需要几年时间，对于新能源车来说尤其如此。因此商会建议避免短期内对于优惠政策技术指标进行大幅调整。

此外，商会还建议尽快明确优惠政策到期后的延续，稳定行业发展预期，例如2020年后的激励政策以及2020年后的购置税减免政策，等等。

### 鼓励产品技术中立

建议政策法规保持技术中立，继续支持插电式混合动力汽车，不明显倾向于纯电动汽车。在2017年4月25号，工信部、发改委和科技部发布的《汽车产业中长期规划》中，对于未来近10年发展，将插电式混合动力汽车定义为三大新能源技术之一，和纯电动、燃料电池汽车并列。未来政策制定应与产业规划中的技术优先级保持一致。

在新能源积分比例上，进口车和国产车面临着同样的标准，然而进口新能源汽车不能像国产车一样享受补贴等优惠政策。商会赞赏新能源汽车免购置税政策中对于国产和进口车型的平等待遇，并促请进一步在其他优惠政策中能平等对待进口和国产新能源汽车。

## 燃料消耗量法规

工业和信息化部等五部委在2017年9月共同发布了《企业平均燃料消耗量与新能源汽车积分并行管理暂行办法》。商会高兴地看到该办法对新能源汽车积分要求给予了一至

and fuel consumption limits, as well as the management of engine fuel economy requirements. This is to ensure that when vehicles' service conditions change or the initial installation of additional energy-saving measures is damaged or cannot be repaired in time, the high efficiency of the installed engine can still be ensured.

### **NEV Policy**

NEVs comprise one of China's strategic emerging industries. AmCham China understands and supports the Chinese government's goal of accelerating the transformation and upgrading of NEVs, and hopes to make a positive contribution to the development of China's new energy automotive industry in the future. To this end, we make the following suggestions.

The continuity and long-term reach of incentive policies should be maintained. At present, the market for NEVs is still in its initial stages. Production and sales rely mainly on subsidies, while licenses for NEVs are more readily obtained and purchasing is also supported by other preferential policies. Automotive enterprises usually need several years for product development, especially for NEV models. We therefore recommend that substantial adjustments to preferential policies be avoided in the short run.

In addition, we suggest that the possibility of an extension following the expiration of preferential policies be clarified as soon as possible, in order to stabilize industry development expectations, similar to incentive policies after 2020 and the purchase tax reduction policy after 2020.

AmCham also recommends that product technology, policies and regulations maintain neutrality. There should be continued support for plug-in hybrid electric vehicles also, instead of an overly strong focus on electric vehicles. On April 25, 2017, the "Long-term Planning for the Automotive Industry," released by the Ministry of Industry and Information Technology (MIIT), National Development and Reform Commission (NDRC) and Ministry of Science and Technology, stated that for the next 10 years of development, the plug-in hybrid electric vehicle will be one of the three major new energy technologies, together with pure electric and fuel cell vehicles. Future policymaking should be consistent with this technological priority in industrial planning.

Regarding new energy vehicle credits, imported cars and domestic cars face the same standards. However, imported NEVs do not enjoy the same subsidies and other preferential policies as domestic cars. AmCham China welcomes the equal treatment given to domestic and imported vehicles regarding the policy of exempting purchase tax for NEVs, and urges that equal treatment be given to imported and domestic new energy vehicles in other preferential policies.

### **Fuel Consumption Regulations**

MIIT and five other ministries and departments jointly released the "Interim Management Measures on Enterprises' Average Fuel Consumption and New Energy Vehicle Credits" in September 2017. AmCham China was encouraged to see that this provides a transitional period of one to two years in the new energy automobile credits requirements. However, our members do not agree with the retrospective requirements by the relevant departments for assessing compliance for fuel consumption credits in 2016 and 2017. AmCham China recommends the introduction of an out-of-loop technique into the fuel consumption calculation as soon as possible, in order to provide further compliance flexibility for enterprises, such as an improved points trading platform, and help enterprises to comply with regulations by paying fines or purchasing credits from the government.

AmCham China also recommends that the fifth stage enterprise average fuel consumption standards be introduced as soon as possible. In the interim our members hope that the departments can consider suggestions from enterprises and jointly work on a feasible plan. For example, given the rapid development of new energy vehicles in China, it is advisable that reasonable targets be set for energy consumption of traditional vehicles. Moreover, preferential multiples in calculations for fuel consumption by NEVs should be continued and more importance given to the development of plug-in hybrid vehicles. Out-of-loop energy-saving technologies should also be continued and an approved technology list opened.

In view of the continuous improvement in energy consumption levels of automotive products and given that the management of enterprises' average fuel consumption can ensure that the industry reaches the standard, our members advise against introducing any new thresholds for a single vehicle's oil consumption.

It is suggested that the average fuel consumption regulations by enterprises in the fifth phase be combined with the double integral policy, in order to initiate the revision or reformulation of corresponding management measures as soon as possible. This will provide the industry with a sufficiently long transition period and compliance flexibility. The continuity of policies can also be maintained, thereby facilitating healthy and stable development of the industry.

### **Import of Used Vehicles and Parts for Remanufacturing and R&D**

Under the "Administrative Measures for the Import of Mechanical and Electronic Products" and the "Catalogue of Used Electromechanical Products Prohibited for Import" issued by the Ministry of Commerce (MOFCOM) in 2001, old vehicles, engines, and most auto parts are prohibited for import in any form. As such, these measures have inhibited imports.

两年的过渡期，但是商会会员不赞成有关部门对 2016 和 2017 年度企业油耗积分达标情况进行考核的追溯性要求。同时，商会建议尽快将循环外技术引入到油耗计算中，进一步为企业提供合规灵活性，比如完善积分交易平台、允许企业通过缴纳罚款或向政府购买积分来合规等。

商会建议尽快出台五阶段企业平均燃料消耗量标准。在此期间，商会会员希望主管部门充分听取企业建议，共同制定合理可行的方案。比如，考虑到中国新能源汽车发展迅速，合理设定传统车能耗目标；继续在核算油耗时给予新能源汽车优惠倍数，并重视插电混合动力车的发展；继续引入循环外节能技术并开放认可的技术清单等。

鉴于汽车产品能耗水平不断提高，且企业平均燃料消耗量管理可以确保行业达标，商会会员不建议再导入新的单车油耗限值要求。

建议结合五阶段企业平均燃料消耗量法规和双积分政策，及早启动相应管理办法的修订或重新制定，给行业提供足够的过渡期和达标灵活性，并尽量保持政策的连续性，便于行业健康稳定发展。

### **进口再制造和研发用旧汽车和零部件**

根据《机电产品进口管理办法》和商务部 2001 年发布的《旧机电产品禁止进口目录》，旧的整车、发动机和大部分汽车零部件禁止以任何形式进口。这些规定限制了再制造用和研发用旧机动车和零件的进口。

商会很高兴看到商务部正在修订《报废汽车回收管理办法》，汽车回收业不再纳入特种行业管理，报废汽车的五大总成允许出售给再制造企业，这将大大促进循环经济和汽车再制造的发展。但国内的旧件数量和质量远不能满足再制造企业规模生产的需求，仍需从国外进口核心零部件旧件。同时为保证再制造产品质量和安全性，应规定“交售给零部件原厂再制造企业或经由原厂授权的再制造企业进行再制造”。

随着汽车研发业务的发展，在华汽车研发中心需要开发具有全球竞争力的产品或参与全球协同研发项目。为实现这一目的，研发中心需要长期进口二手整车和零件。研发用旧车和零件无法进口，严重阻碍了在华汽车研发中心参与国际合作项目，使得产品和技术水平发展受限。

为此，商会促请商务部、海关总署和国家市场监督管理总局修改上述进口管理办法和 2001 年的禁止进口目录，

或明确研发用旧车及旧零部件进口的管理办法，上述工作将有助于中国制造的汽车和零部件走向世界并提高中国研发队伍的能力。

### **智能网联汽车**

为加速发展中国的智能网联技术及市场，商会建议采取以下措施：

#### **建立国家层面的发展框架和政府部门协调机制**

商会很高兴看到中国政府已经将智能网联汽车的发展提高到国家战略层面来考虑。智能网联汽车产业是多学科与多技术的交叉融合，与之相关的政府管理部门繁多，商会会员欣闻关于车联网以及智能汽车的部际协调小组已经或计划成立，商会期望通过此机制，相关部委能加强合作，加大对产业的支持；同时通过借鉴发达国家的成熟经验，评估现有法律法规不适应智能网联汽车发展的方面并予以修订调整；制定兼具整体性和灵活性的政策，培育一个更加健康的市场环境；以政策全生命周期评价为抓手，提高政策有效性和针对性。

#### **智能网联汽车的发展亟需公共道路的测试**

在中国目前政策法规框架条件下，不允许在高速公路上进行测试活动。测试是车辆研发的关键一步，现行法规阻碍了自动驾驶技术的应用与发展。商会建议权威机构加强与其他国家决策者及立法者的沟通，以获得更多的经验来领导加速自动驾驶相关的立法活动，考虑修改《道路交通安全法》中的相关内容。

目前，工信部、交通部、公安部三部委正在联合研究制定《智能网联汽车公共道路测试适应性规范》。商会希望这一政策尽快出台，取消全国范围的道路测试的普遍限制，并逐步开放部分高速公路与城市道路用于测试。

#### **明确针对汽车行业数据和信息安全的具体要求**

《网络安全法》及相关配套法规如《个人信息和重要数据出境安全评估办法》（征求意见稿）中，限制了跨国的数据交流，但并未给出明确的受限制数据传输的定义。出于研发和将来智能汽车自主学习的目的，内资、合资和外资汽车企业在智能网联汽车方面都必然存在与境外的数据交换，如基于交通信息数据的自动驾驶算法迭代与升级等。商会会员建议放开不涉及国家安全信息、个人信息需脱敏处理的基于智能网联汽车研发的数据传输，尽快推动



AmCham China welcomes the amendments made by MOFCOM to the “Administrative Measures for the Recycling of Scrapped Vehicles.” The measure means the vehicle recovery industry will no longer be listed under industries for special management, and five main components of scrapped vehicles will be allowed to be sold to remanufacturing enterprises. These improvements will greatly promote the development of the recycling economy and the remanufacture of vehicles. However, the quantity and quality of used parts in China are still far from meeting the large-scale production needs of remanufacturing enterprises, meaning that used core parts still need to be imported from abroad. To ensure the quality and safety of remanufactured products, a provision should be in place allowing used parts to be “delivered and sold to the original manufacturing enterprises of the parts or remanufacturing enterprises authorized by the original manufacturers for remanufacturing.”

With the development of the automotive R&D business, automotive R&D centers in China need to develop globally competitive products or take part in globally coordinated R&D projects to be successful. In line with this objective, R&D centers need to import used vehicles and parts. However, prohibitions on the import of used vehicles and parts for R&D have seriously hampered the participation of R&D centers in international cooperation projects and restricted their development of products and technology.

Therefore, AmCham China urges MOFCOM, the General Administration of Customs (GAC) and the General Administration of Quality Supervision, Inspection, and Quarantine (AQSIQ) to revise said administrative measures and the 2001 catalogue of items prohibited for import. Alternatively, they are urged to clarify the administrative measures for importing used vehicles and parts for R&D purposes. These initiatives will help vehicles and parts made in China to find their way into global markets and enhance the capability of Chinese R&D talent.

### ***Intelligent and Connected Vehicles***

In order to speed the development of China’s smart networking technologies and market, AmCham-China proposes the measures outlined below.

#### **Set Up a National-Level Development Framework Between Government Departments**

AmCham China was encouraged to see that the Chinese government has considered the development of ICVs at a national strategic level. This industry is the fusion of multiple disciplines and technologies involving a wide range of government administration departments. Our members were pleased to learn that the inter-ministerial coordination group for smart cars and vehicle networks is set to be established. We hope that through this mechanism the following can be achieved: relevant ministries

can strengthen cooperation and increase support to the industry; parts unsuited to the development of ICVs can be reassessed by leveraging the experience of developed countries; a holistic and flexible policy can be implemented to foster a healthier market environment; and the entire life cycle of policies can be evaluated to make them more effective and targeted.

#### **Expand Tests on Public Roads to Meet ICV-Development Needs**

China’s current policy and regulatory framework does not allow testing activities on expressways. However, testing is a key step in vehicle development and current regulations prevent the application and development of autonomous driving technology. We recommend that the authorities strengthen communication with policymakers and legislators in other countries in order to gain more experience in legislation related to automated driving and to consider revising the Road Traffic Safety Law accordingly.

MIIT, the Ministry of Transport (MOT), and Ministry of Public Security (MPS) are now jointly researching and formulating “Standards for Road Testing Intelligent and Connected Vehicles.” AmCham China hopes that the policy can be introduced as soon as possible and that general nationwide restrictions on road testing can be cancelled so testing can begin.

#### **Clarify Requirements on Data and Information Security of Automotive Industry**

The Cyber Security Law and related supporting laws and regulations, such as “Assessment Methods of Exit Security of Personal Information and Important Data” (Exposure Draft), restrict cross-border data transfers but do not give a clear definition of restricted data transmission. For the purposes of R&D and future autonomous learning of intelligent vehicles, domestically-invested, joint-venture and foreign-invested automotive enterprises need to exchange data with foreign countries. This may include iteration and upgrade of automatic driving algorithms based on traffic information data. Our members recommend opening data transmission based on ICV R&D without involving issues related to national security information, or personal information that requires a desensitization process. AmCham China also urges that more efforts be made to progress the relevant draft standards and the final drafts be published as soon as possible. The views of foreign automotive enterprises should be taken into consideration when formulating relevant Internet of Vehicles information security standards. In addition, to promote the development of Internet of Vehicles, the Internet of Vehicles should not be included in the key information infrastructure at this stage.

相关标准草案的进程并发布终稿，在制定相关车联网信息安全标准时更多听取外资车企的意见。另外，为促进汽车网联化的发展，在目前阶段，不要将车联网划为关键信息基础设施。

### **高精度地图使用与地理信息收集**

中国的《测绘法》要求高精度地图使用必须经过拥有测试资质的地图供应商的偏转处理，但这不能满足自动驾驶研发的需求，且地图偏转和偏转插件以及禁止高程表达等信息显示会导致无法达到自动驾驶系统对地图的技术要求，使得车辆在某些情况下难以准确定位而造成严重的安全问题。

《测绘法》同时限制了地理信息的收集，但自动驾驶的算法迭代升级需要基于道路信息与实际路况的输入。商会建议调整测绘法的相关要求，允许企业基于自动驾驶研发需求的未偏转高精度地图使用与基于动态地图生态建设目的的地理信息收集、上传活动。

### **建立符合国际惯例的标准体系**

中国现有标准部分限制了新技术的发展。应尽早系统地确定和清除现有的标准障碍，以便推动 ICV 的发展。这些障碍可以通过修改和修正目前的标准来解决，也可以通过允许新技术的豁免实现。目前，欧盟、北美正在积极制定具体的技术标准与指导意见。考虑到智能网联汽车跨专业与部门的复杂性，商会期待和促请中国政府以及产业组织参与国际上法规制定流程的讨论，制定与国际标准统一的技术标准，同时避免多部门起草同样或类似标准，避免过度监管，旨在创建推荐性标准，而不是规定最低安全要求的强制性规定。商会促请实施透明、中立的产业政策，推动产业发展。

### **放宽对增值电信业务和经营性互联网信息供应商外资准入限制**

一些车联网业务，比如车载信息系统，属于增值电信业务的范畴。根据《中华人民共和国电信条例》，外资企业不能直接进入增值电信业务和经营性互联网信息领域提供服务，必须通过合资企业的形式且外资股权比例不能超过 50%。外资企业经营业务模式受到很大限制，在竞争上处于劣势。商会会员建议放松股权比例限制，允许外资控股的企业可以进入上述领域。

## **促进汽车消费**

### **关于皮卡进城**

2016 年，工信部、发改委、公安部等部委联合发布了皮卡进城试点，为促进消费和发展创新的流通模式释放了积极的信号。商会会员希望在更大范围内实施皮卡进城试点项目，破除对皮卡进城的限制，进一步促进皮卡消费并实现该项目的规模效应。

## **建议**

### **对中国政府：**

- 政策制订和起草的早期阶段，给与企业更多参与讨论、反馈意见的机会，让政策、标准更符合市场需求，更有利于市场和行业的健康发展。
- 考虑到汽车生产、技术升级周期较长，政策制定和调整的周期应不少于三年。
- 建立有效、透明、公开的协调机制，各个政府主管机构应当加强合作，明确主要概念、要求和职责。在新的领域加大部门间的合作，加大对产业的支持，特别是智能网联汽车的发展及其基础设施配套和投资。
- 大力发展新能源车的同时，鼓励传统燃料车发展节能技术。
- 在下一阶段排放标准实施前，给乘 / 商用车 4-5 年准备期。
- 在商用车油耗标准中增加发动机的测试和限值。

### High-precision Map Use and Geographic Information Gathering

China's Surveying and Mapping Law states that the use of high-precision maps requires a deflection processing by map suppliers with test qualifications. However, this cannot meet the requirements of autonomous driving R&D. Moreover, map deflection, deflection plug-ins and prohibition of elevation expression and other information can result in a failure to meet the technical requirements of a driving system for maps, making it difficult to locate the vehicle accurately in certain situations and leading to serious safety problems.

The Surveying and Mapping Law also limits the collection of geographic information, despite the fact the iterative upgrade of autonomous driving algorithms requires input based on road information and actual road conditions. AmCham China proposes that the relevant provisions of the Law be amended in order to allow enterprises to use unbiased, high-precision maps based on autonomous driving research and development demand, and to collect and upload geographic information for the purpose of ecological construction of dynamic maps.

### Establish a System of Standards Aligned with International Practices

Current standards in China have limited the development of new technologies. Existing barriers to standards should be systematically identified and removed as quickly as possible in order to facilitate the development of ICVs. These obstacles can be solved by amending or correcting current standards, or by allowing exemptions for new technologies.

Currently, the EU and North America are drafting specific technical standards and guidelines. Considering the cross-disciplinary and interdepartmental complexity of ICVs, AmCham China encourages the Chinese government and industrial organizations to participate in the discussions on international regulatory formulation and identify technical standards that are aligned with international standards. The drafting of the same or similar standards in many sectors should also be avoided, as should over-regulation. Overall our members urge the implementation of industrial policies that are transparent and nationality-neutral in order to promote the advancement of the industry.

### Lessen Foreign Capital Access Restrictions on Value-Added Telecommunications Businesses and Commercial Internet Information Providers

Some Internet of Vehicles (IoV) business, such as telematics, falls under value-added telecommunications services (VATS). Under China's "Telecommunications Regulations," foreign companies cannot directly provide services in the fields of VATS and for-profit Internet information through wholly foreign-owned enterprises. To do so, they must form joint ventures in which the proportion of foreign equity

is not allowed to exceed 50 percent. This has significantly restricted the foreign companies' business models and placed them at a competitive disadvantage. Our members urge that the equity cap be lifted to allow foreign companies to enter the field on a level basis.

### *Promoting Automobile Consumption*

#### Use of Pickup Trucks in Cities

In 2016, MIIT, NDRC, and MPS jointly launched a pilot program allowing the use of pickup trucks in cities. This was welcomed as a positive signal for promoting consumption and developing innovative models of circulation. Our members urge that the program be more widely implemented and restrictions on pickup trucks be removed in order to further encourage pickup truck consumption and achieve economies of scale.

## Recommendations

### *For the Chinese Government:*

- Provide enterprises with more opportunity to participate in discussions and submit opinions at the early policy drafting stages, so that policies and standards can meet market needs better and facilitate the development of the market and the industry.
- Institute a policy formulation and adjustment cycle of at least three years to accommodate the long cycle of vehicle production and technology upgrading.
- Establish an effective, transparent, and open mechanism for coordination. The responsible government authorities should strengthen cooperation and clarify their main concepts, requirements, and duties. Interdepartmental teamwork in new fields should be enhanced and more support be given to the industry, especially regarding the development of ICVs and investment in related infrastructure.
- Encourage the development of energy-conserving technology for vehicles using traditional fuels while speedily developing NEVs.
- Provide a preparation period of four to five years for passenger and commercial vehicles before the implementation of the next stage of emissions standards.
- Add engine testing and thresholds to commercial vehicle fuel consumption standards.



# Banking and Capital Markets

## Introduction

**F**oreign banks, including US banks, have long expected the Chinese market to provide substantial opportunities. Some even predicted that access to financial services would allow growth of total assets of foreign banks in China to between US \$650 billion (RMB 4.32 trillion) and US \$950 billion (RMB 6.31 trillion) by 2025. However, by the end of 2015, the total assets of foreign banks in China were only US \$404 billion (RMB 2.68 trillion), a year-on-year decrease of 3.94 percent. The market share of total assets of foreign banks remains low and continues to decline. In 2016 total assets of foreign banks fell to only 1.26 percent of total bank assets in China, according to the China Banking Regulatory Commission (CBRC)'s 2016 annual report.

As reflected in the market share statistics on banking assets, US banks continue to encounter difficulties in China. These include financial institution ownership caps, investment quotas and inadequate investor protection and transparency.

However, AmCham China welcomes the Chinese government's expanded commitment to improve the business environment for foreign financial institutions in China, and to make it easier for foreign investors to participate in Chinese capital markets. The country's ongoing efforts to open its banking sector and capital markets will serve to strengthen them, and allow finance to serve the real economy, while bringing balanced economic development.

## Recent Developments and Ongoing Regulatory Challenges

### *Commercial Banking*

AmCham China members welcome China's commitment to ease market access, further open service sectors and pursue RMB internationalization. According to then Governor of the People's Bank of China (PBOC) Zhou Xiaochuan at the 19th Party Congress, China will step up efforts to open the financial sector and encourage more competition from foreign financial institutions. Opening measures include Stock Connect, Bond Connect, institutional partnerships, as well as greater market access. At the same event Chairman

of the China Banking and Insurance Regulatory Commission (CBRC) Guo Shuqing also stated that China would accelerate the opening of its banking sector to foreign investors. AmCham China members hope to see concrete implementation steps in 2018. AmCham China members currently face obstacles in certain localities, continue to lack clear qualification criteria, and are still blocked from entering certain banking business areas, despite strong encouragement from the central government. Regulatory reporting requirements are still onerous especially at the local level, which has unnecessarily increased the operating costs of foreign banks in China. As such, our members welcome the 19th Party Congress Report's commitment to protect the legitimate rights and interests of foreign investors, and we hope to enjoy a full comment period before the issuance of any further implementation rules, especially regarding cybersecurity rules.

### *Lead Underwriter in CIBM*

The grant of the syndicate member bond underwriting license by the National Association of Financial Market Institutional Investors (NAFMII) in 2017 now allows certain pilot AmCham China members to act as co-managers in the underwriting of corporate bonds in the China Interbank Bond Market (CIBM). This is encouraging. However, under the license, AmCham China members are still unable to act independently as corporate bond lead underwriters. Our members would like to apply for further approvals and license upgrades from NAFMII to become corporate bond lead underwriters.

NAFMII launched the Assessment Rules on Relevant Members Participating in the Corporate Bond Underwriting Business on April 8, 2011. However, Article 26 lacks clarity in the assessment criteria for upgrading from member to lead underwriter. AmCham China urges NAFMII to set up further clear qualification criteria for our members to follow.

Moreover, it is also unclear whether foreign institutional investors are able to act as lead underwriters to underwrite financial bonds. The PBOC's Measures for Financial Bond Issuance in the CIBM set out vague criteria in Article 17. Unsurprisingly, no foreign financial institution has yet underwritten financial bonds as a lead underwriter in the market.

# 银行和资本市场

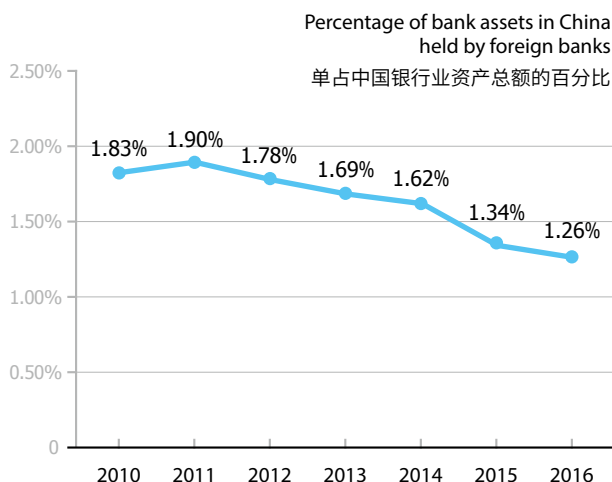
## 引言

**包**括美国银行在内的外资银行长期以来一直期望中国市场可以为它们提供更多的机会。有预测称至 2025 年，金融服务市场的准入将使在华外资银行的总资产增长 6500 亿美元（4.32 万亿人民币）至 9500 亿美元（6.31 万亿人民币）。然而，截止 2015 年年底，在华外资银行资产总额只有 4040 亿美元（2.68 万亿元人民币），年同比减少 3.94%。外资银行总资产占有的市场份额仍然很低而且继续减少。根据中国银行业监督管理委员会（中国银监会）公布的 2016 年度报告，2016 年外资银行资产总额下降至中国银行资产总额的 1.26%。

从银行业资产市场份额统计数据可以看出，美国银行在中国继续遭遇困难，包括金融机构所有权上限，投资配额以及投资者保护和透明度不足。

### Foreign Banking Assets in China

#### 外资银行在华资产情况



Source: CBRC 2016 Annual Report

来源：中国银监会 2016 年年报

然而，中国美国商会（商会）欢迎中国政府扩大承诺，改善外国金融机构在中国的经营环境，并使外国投资者更容易参与进中国资本市场。中国持续的努力开放银行业和资本市场将有助于加强金融市场，使金融服务于实体经济，并实现均衡的经济发展。

## 最新进展及现存监管挑战

### 商业银行

商会成员企业欢迎中国致力于放宽市场准入和进一步开放服务业和人民币国际化的决心和努力。据时任中国人民银行行长周小川在第十九次全国代表大会上表示，中国将加大金融业的开放力度，鼓励外资金融机构加大竞争力度。开放措施包括股票通，债券通，机构合作以及更开放的市场准入。中国银行业和保险业监督管理委员会（银保监会）主席郭树清同时表示，中国将加快向境外投资者开放银行业。商会会员企业希望能在 2018 年看到的具体实施步骤。尽管中国政府给予了大力鼓励，但商会成员目前仍在某些地区面临障碍，缺乏明确的资格标准，并且依然被禁止进入某些银行业务领域。监管报告要求仍然繁重，特别是在地方一级，这增加了外国银行在中国的不必要的运营成本。因此，商会会员欢迎第十九次党代会报告承诺保护外国投资者的合法权益，商会希望在发布任何进一步实施细则之前享有充分的评论期，特别是关于网络安全规则。

### 内地银行间债券市场的主承销商

2017 年由中国银行间市场交易商协会（NAFMII）授予的集团成员债券承销许可证现在允许某些商会会员试点公司担任中国内地银行间债券市场公司债券承销的副承销商（CIBM），这很令人鼓舞。但是，根据许可证，商会会员仍不能独立作为公司债券主承销商。商会会员企业希望申请国金融市场机构投资者协会的进一步批准和许可升级，成为公司债券主承销商。

### Bond Connect

AmCham China members would like to become onshore Bond-Connect Market-Makers. PBOC released the “Interim Measures for Bond Connect between Mainland and Hong Kong to set up the framework for Northbound Trading” (Interim Measures). The Interim Measures outline the scope of qualified overseas investors and the type of permissible trading activities. However, detailed qualification criteria for Northbound Trading application is still lacking. There is uncertainty about the criteria and the timing as to when the second batch of the Bond Connect will be launched. Since November 2017, selected financial institutions have been required by PBOC to join the CIPS (Cross-border Inter-bank Payment System) 1.5 system. Also in 2017, a few US financial institutions were granted a Type-A License by PBOC on a pilot basis which was one of the outcomes of the US-China 100 Day Plan. Although meeting these conditions is believed to support Northbound Trading applications, our members are still unclear about the remaining criteria.

Moreover, our members understand that, due to technological restrictions, the current Northbound Trading platform will be unable to load more than 30 offshore investors, limiting participation of qualified investors in the CIBM. As such, we would like to see PBOC specify clearer qualifications criteria and update its trading system in order to load more qualified foreign institutional investors.

### RMB Internationalization

The development of the RMB into a global currency has made progress since 2010. Although the RMB’s market share is still small, SWIFT data shows that the RMB is now the sixth most active currency for international payments. Standard Chartered has estimated that the RMB will become the G3 currency by 2020, overtaking the Canadian Dollar, the Japanese Yen, and the Pound Sterling.

China has continued to open its capital market to overseas investors. The most notable case is the opening of CIBM in 2016, the world’s third largest bond market after Japan and the US, to all overseas financial institutions. As of August 2017, the total registration quota among 42 overseas issuers in the CIBM reached RMB 328.7 billion (including RMB 309.1 billion of RMB-denominated bonds and RMB 19.6 billion equivalent SDR-denominated bonds). Some 33 foreign issuers have issued a total of RMB 11.3 billion bonds through 57 transactions.

To support RMB internationalization, China has taken measures to improve its financial infrastructure. The Belt and Road Initiative will also be a major impetus for RMB internationalization, as it will contribute to increased usage of RMB in cross-border trade, cash management, financing and investments, particularly in participating countries.

RMB internationalization is a long-term goal that can be affected by domestic reforms during its implementation, including capital account convertibility, exchange rate reform, and interest rate liberalization. In this context, it will be helpful if the recently established Financial Stability and Development Committee becomes more engaged in the coordination of major policy issues regarding RMB internationalization, in order to ensure policy consistency and to refrain from retrograde actions in the future.

RMB internationalization will benefit from China’s ongoing market opening. However, government-to-government communication continues to be important and should be increased, not only in terms of building general consensus, as at the Belt and Road Forum, but also with regard to setting out specific measures that will promote use of the RMB internationally.

### Asset-Backed Notes

While securitization is relatively new in China, it is expected to become a crucial component of China’s financial reform and innovation. This was confirmed at the 19th Party Congress last October.

On July 2, 2013, the State Council promulgated the “Guidance of the General Office of the State Council on Financial Support of Economic Structure Adjustment, Transformation and Upgrading,” encouraging credit asset securitization. In August 2012, NAFMII promulgated the “Guidelines on Asset-backed Notes for Non-financial Enterprises in the Interbank Bond Market” to begin the offering of asset-backed notes (ABN). In the same month, three ABNs were successfully issued, marking the official launch of the product.

Many leading international banks have lengthy experience in asset securitization, both on a global scale and in China. Some have impressive track records as active lead underwriters of credit securitization deals by financial companies in the CIBM. However, no foreign banks have been able to receive NAFMII’s license for lead underwriting ABNs by non-financial enterprises so far, and have been restricted to participation as co-managers or financial advisors, thereby limiting foreign banks’ potential contribution, which is not conducive to healthy, long-term development of the market.

Foreign banks’ participation as lead underwriters will facilitate the adoption of international best practices and knowledge transfer, encourage healthy competition, and accelerate product innovation. These are all critical for supporting the real economy, helping issuers diversify financing channels, and reducing cost. These are all key to China’s economic restructuring in the “New Era”.

At the 19th Party Congress continued market opening was outlined as an important aim, and RMB internationalization was also reaffirmed as a key policy goal. Foreign banks’ increased participation is in line with these initiatives as

中国银行间市场交易商协会于2011年4月8日发布了“关于参与公司债券承销业务的相关会员的评估规则”。但是，第二十六条对从会员升级为主承销商的评估标准缺乏明确性。商会促请中国银行间市场交易商协会为商会成员制定进一步明确的资格标准。

此外，外国机构投资者是否能够担任主承销商承保金融债券也不明确。中国人民银行的内地银行间债券市场金融债券发行办法第17条中列出的标准并不明确。因此外国金融机构尚未能作为主承销商在市场上承销金融债券是一件毫不意外的事情。

### **债券通**

商会会员希望能成为在岸债券通造市商。中国人民银行发布了“内地与香港债券通暂行办法”，建立了“北向交易框架”（暂行办法）。“暂行办法”规定了合格境外投资者的范围和允许的交易活动类型。然而，仍然缺乏北向交易应用的详细资格标准。对于第二批债券通启动的标准和时机尚不确定。

自2017年11月以来，中国人民银行要求部金选定的金融机构加入CIPS（跨境银行间支付系统）1.5系统。同样在2017年，少数美国金融机构获得中国人民银行的A类许可试点，这是中美“100天计划”的成果之一。尽管符合这些条件被认为支持北向交易申请，但商会会员仍然不清楚其余的标准。

此外，商会会员也明白，由于技术限制，目前的北向交易平台将无法负担超过30个海外投资者，限制了合格投资者对内地银行间债券市场的参与。因此，我们希望看到中国人民银行规定更清晰的资格标准并更新其交易系统，以承载更多合格的外国机构投资者。

### **人民币国际化**

人民币成为全球货币自2010年以来取得了进展。尽管人民币的市场份额仍然很小，但环球银行金融电信协会（SWIFT）数据显示人民币现在是国际支付的第六大活跃货币。渣打银行估计，到2020年人民币将超过加元，日元和英镑，成为G3货币。

中国继续向海外投资者开放资本市场。最显著的例子是2016年内地银行间债券市场向所有海外金融机构开放，这是继日本和美国之后的全球第三大债券市场。截至2017年8月，42家内地银行间债券市场境外发行人的注册总额

达到3287亿元人民币（其中人民币债券3091亿元，人民币196亿元等值的特别提款权债券）。约有33家境外发行人通过57笔交易发行了总额为113亿元人民币的债券。

为支持人民币国际化，中国已采取措施改善其金融基础设施。“一带一路”倡议也将成为人民币国际化的重要动力，因为它将有助于增加人民币在跨境贸易，现金管理，融资和投资中的使用，特别是在参与国中。

人民币国际化是一个长期目标，在其实施过程中可能受到国内改革的影响，包括资本项目可兑换，汇率改革和利率市场化。在这种背景下，如果最近成立的金融稳定和发展委员会在协调有关人民币国际化的重大政策问题上更加投入，以确保政策的一致性，并避免未来的逆行行动，将会有所帮助。

人民币国际化将受益于中国正在进行的市場开放。然而，政府间的沟通仍然很重要，因此应该加强一不仅是在建立普遍共识方面，如在“一带一路”论坛上，还包括制定具体措施以促进人民币在国际上的使用。

### **资产保证票据**

虽然证券化在中国相对不成熟，但它有望成为中国金融改革和创新的重要组成部分。这在去年十月的第19届党代会上得到了证实。

2013年7月2日，国务院颁布了《关于金融支持经济结构调整和转型升级的指导意见》，鼓励信贷资产证券化。2012年8月，中国银行间市场交易商协会颁布了《银行间债券市场非金融企业资产支持票据指引》，开始发行资产保证票据（ABN）。同月，三个资产保证票据成功发布，标志着产品的正式发布。

许多领先的国际银行在全球和中国都拥有丰富的资产证券化经验。一些国际银行作为内地银行间债券市场中的金融公司交易的信贷证券化的主要承销商，拥有令人印象深刻的业绩记录。然而，迄今为止，没有外资银行能够获得中国银行间市场交易商协会对非金融企业主承销资产保证票据的许可，并且仅限于作为副承销商或财务顾问进行参与，因此限制了外资银行的潜在贡献，这不利于健康、长远的市场发展。

外资银行作为主承销商参与将促进采用国际最佳做法和知识转移，鼓励良性竞争并加速产品创新。这些对于支持实体经济至关重要，帮助发行人实现融资渠道多样化并



they are able to bring in high-quality international investors, and promote the use of the RMB. Moreover, they will be in a better position of drawing on international standards for China's specific needs.

AmCham China strongly encourages Chinese regulators to take a holistic review of qualifications of high-performing foreign banks in the CIBM, and relax market access barriers to allow them to make an even greater contribution.

### *Cybersecurity*

Foreign banks operating in China face many challenges in implementing the Cybersecurity Law (CSL). Key observations and suggestions are as follows.

#### Key Challenges for Network Operators

Security assessment is required for the cross-border transfer of Personally Identifiable Information (PII) and Important Data, as outlined in the Cyberspace Administration of China (CAC)'s "Draft Measures on Security Assessment of Data Export of Personal Information and Important Data" (CAC Draft Measures), and the China National Information Security Standards Technical Committee's "Draft Guidelines for Data Cross-Border Transfer Security Assessment" (Draft Guidelines). AmCham China believes these draft documents would benefit from the following:

- A clearer definition for Network Operators (NO) is needed in order to match compliance obligations with scope of business. To date, companies operating in China have had to rely on verbal guidance received at CAC meetings to supplement written rules.
- The outlined scope of cross-border data transfer is inconsistent in the CSL and CAC Draft Measures. CSL Article 37 states that Personal Information and Important Data collected by Key Information Infrastructure Operators (KIIOs) in China is to be stored within the mainland territory of China. However, in the CAC Draft Measures, this requirement applies to NOs as well.
- The scope of "Important Data" is unclear. Under the CAC Draft Measures, CAC has clarified that "Important" here is likely to be measured with reference to the State and the public, rather than from the standpoint of particular interest groups. However, without sufficient clarification, it will be difficult for businesses, especially international ones, to comply with this requirement in practice. AmCham China understands that the "Draft Guidelines" specify the scope of "Important Data" for the banking industry. However, such scope includes almost all bank data, which means almost every cross-border transfer of data by banks would be subject to this requirement. As it is common practice for international businesses to use a "hub" infrastructure to benefit from economies of scale,

under the "Draft Guidelines," the compliance costs for foreign banks will be difficult to estimate and are likely to be extremely high.

- According to the two draft documents, any data export of PII and Important Data by NOs will require a security assessment to cover both sending and receiving parties. Under the "Draft Guidelines," both sending and receiving parties are required to establish a corresponding cross-border data transfer policy and assessment mechanism. Furthermore, the sending party needs to assess the receiving party's information protection capacity on the basis of its business qualifications, ongoing relationship with the sender, information security management mechanism, and technical support capabilities, as well as the political and legal environment in its respective country or region. If such requirements become effective and mandatory, it will be very difficult for a foreign bank to implement these requirements in practice and the cost of additional resources to comply with these requirements will be substantial. AmCham China urges CAC to recognize international industry certificates or results of assessments to reduce the security assessment burden on foreign banks.
- Finally, it is imperative to have clearly defined roles for the various regulatory bodies involved here. Particularly regarding interpretation and enforcement, it is important to have clear guidelines to ensure consistent interpretation and application.

#### Key Challenges for Key Information Infrastructure Operators (KIIOs)

Security assessments are required for the procurement of network products and services which may affect national security (Article 35 of the CSL). AmCham China has the following concerns in relation to this requirement:

- According to Article 35 of the CSL, Key Information Infrastructure Operators (KIIOs) have a legal obligation to ensure that their procurement of network products and services affecting national security passes the relevant security assessment. However, the definition of KIIO in the CSL is too broad, and no further details have been issued by CAC. As such, for foreign banks, it is still unclear as to what constitutes a KIIO. Without a clear understanding of their role under the CSL, it is difficult for foreign banks to determine the applicability of the rules to their operations and adapt their practices accordingly. Moreover, if foreign banks are categorized as KIIOs, additional resources and effort will be required to implement such requirement which may be deemed to constitute a technical barrier to trade.
- Under the CSL, no definition of "national security" is provided. According to CAC's "Measures for Security Review of Network Products and Services," the KIIO protection department is responsible for ascertaining

降低成本。这些都是“新时代”中国经济转型的关键。

在第十九届党代会上，继续开放市场被列为重要目标，人民币国际化也被重申为一项重要的政策目标。外资银行参与度的提高符合这些举措，因为它们能够引进高质量的国际投资者，并促进人民币的使用。而且，他们将在为中国的特定需求制定国际标准方面处于更有利的地位。

商会强烈鼓励中国监管机构对内地银行间债券市场高绩效外资银行的资质进行全面审查，放宽市场准入壁垒，允许他们做出更大的贡献。

## 网络安全

在中国运营的外资银行在实施《网络安全法》方面面临诸多挑战。主要意见和建议如下：

### 网络运营商面临的主要挑战

根据中共中央网络安全和信息化委员会办公室（“网信办”）发布的《个人信息和重要数据出境安全评估办法（草案）》（“网信办草案”）和中国国家信息安全标准技术委员会发布的《信息安全技术数据出境安全评估指南（草案）》（“指南草案”），个人信息（PII）和重要数据的出境需要进行安全评估。商会认为以下意见和建议将有助于这些文件草案的厘清与执行：

- 更清晰的“网络运营者”提供的定义，以使合规义务能与业务范围相匹配。到目前为止，在中国运营的公司只能依赖网信办会议上收到的口头指导意见来补充书面规网信办定。
- 《网络安全法》和网信办草案中所概述的跨境数据传输规定的适用范围不一致。《网络安全法》第37条规定，关键信息基础设施的运营者在中国收集的个人信息和重要数据将存储在中国大陆境内。但是，在网信办草案中，该要求也适用于网络运营商。
- “重要数据”的范围不明确。根据网信办草案，网信办明确指出这里的“重要”主要是针对国家和公众，而不是从特定利益集团的角度衡量的。但是，如果没有足够清晰的说明，企业，特别是国际企业将难以在实践中遵守这一要求。商会理解“指南草案”明确了银行业“重要数据”的范围。但是，这一范围几乎包括了所有的银行数据，这意味着银行几乎每次跨境数据转移都将受到这一要求的约束。出于获取规模经济效益的考量，国际企业通常使用“枢纽集中地”基础

设施运营，因此如根据“指南草案”的“重要数据”范围执行，外资银行的合规成本将难以预估，很可能将会非常高。

- 根据这两份文件草案，任何网络运营者的个人信息和重要数据的出境都需要对发送方和接收方进行安全评估。根据“指南草案”，发送方和接收方都需要建立相应的跨境数据传输政策和评估机制。此外，发送方还需要根据接收方的业务资质，与发送方持续的业务关系，信息安全管理机制，技术支持能力以及本国或当地的政治和法律环境来评估接收方的信息保护能力。如果这些要求成为强制性规定，那么外国银行在实践中将很难执行这些要求，此外为遵循这些要求所需投入的额外资源成本将会很大。商会促请网信办能对国际行业证书或评估结果予以承认网信办，以降低外资银行的安全评估负担。
- 最后，有必要进一步明确所涉及的各个监管机构的定位和职权。特别是在解释和执行层面，通过清晰的监管指导来确保规定解释和执行的一致性是十分重要的。

### 关键信息基础设施运营者（KIIOS）面临的主要挑战

对于可能影响国家安全的网络产品和服务的采购需要进行安全评估（《网络安全法》第35条）。商会对此要求有以下担忧：

- 根据《网络安全法》第35条，关键信息基础设施运营者（KIIOS）需承担法定义务确保他们采购的可能影响国家安全的网络产品和服务应通过相关安全评估。然而，《网络安全法》对关键信息基础设施运营网信办者的定义过于宽泛，目前网信办没有发布进一步的认定细则网信办。因此，对于外资银行而言，目前还不清楚关键信息基础设施运营者的具体范围。外资银行如果不能清楚地了解其在《网络安全法》中的定位，将很难确定法规要求对其运营的适用性，以相应地调整其日常操作流程。此外，如果外资银行被归类为关键信息基础设施运营者，则需要投入额外的资源和努力来执行这种可能被认为构成贸易技术壁垒的要求。
- 《网络安全法》下并未提供“国家安全”的具体定义。根据网信办的《网络产品和服务安全审查办法》，关键信息基础设施运营者保护部门负责确定相关网络产

if there is any impact to national security. However, it is unclear whether this KII protection department is under the authority of CAC or industry regulators. If the former, CAC will be the sole authority to verify “national security impact” in various industries, and implementation may be neither practical nor efficient, resulting in an adverse impact on the daily operation of KIOs.

## Securities

AmCham China welcomed China’s continued efforts to open up the securities sector in 2017. These initiatives are set to shore up efforts to eliminate financial sector risks, as well as to attract more foreign capital and financial expertise into China.

In the past few years, China has taken strong measures to open its equities market, most notably through the launch of the Shanghai and Shenzhen Stock Connect schemes. China also increased Hong Kong’s RMB Qualified Foreign Institutional Investor (RQFII) quota to RMB 500 billion. In response to China’s efforts to open its equities market, MSCI announced in June 2017 that it would add 222 mainland Chinese shares to its benchmark emerging markets index as of June 2018. The benefits of liberalization quickly began to emerge as the MSCI announcement drove foreign holdings of Chinese shares above RMB 1 trillion for the first time in September 2017. Later, in November 2017, the government announced its plans to raise equity ownership caps for foreign securities, futures and asset management companies’ joint ventures (JVs) in China to 51 percent and later to 100 percent. This was followed by the China Securities Regulatory Commission (CSRC) issuing the Measures for the Management of Foreign-invested Securities Companies in April 2018, after soliciting public comments in March 2018. This long-awaited policy is a critical step towards fully realizing the potential of China’s capital markets.

Granting foreign investors full access to domestic capital markets will benefit China by improving the competitiveness of the domestic securities industry, enabling it to better serve the real economy; helping China to establish a multi-layered international capital market; and boosting direct financing and reducing financing costs and risks. AmCham China believes the opening of the capital markets will act as a strong catalyst for the “overall opening up” as encouraged by China’s senior leadership.

### Ownership

AmCham China welcomes the government’s commitment to lift ownership caps for Chinese-foreign securities joint ventures (JVs). Our members have long maintained that full ownership would increase inbound foreign investment, heighten overall market discipline and add to the expertise of local Chinese firms. Full ownership would also support the continued development of Shanghai and other large

Chinese cities as international financial hubs, as foreign financial institutions move their subsidiaries and staff to China from other parts of Asia. In addition, full ownership would maximize the impact of the recent wave of reforms and support China’s goal of facilitating capital allocation to the private sector.

In this regard, our members welcome the release of the CSRC Measures for the Management of Foreign-invested Securities Companies, which allows foreign investors to set up 51 percent foreign-owned securities JVs, and to subsequently increase their ownership to 100 percent after three years. AmCham China also welcomes the assurance from the PBOC that the lifting of equity ownership caps will happen soon, and we hope the CSRC will adhere to this commitment. Swiftly implementing the rules will allow the benefits of lifting equity ownership caps to be reaped as soon as possible. It will also help celebrate 2018 as the 40th anniversary of China’s reform and opening up, which has brought immense benefits to China.

While ensuring swift implementation, it is also crucial that China avoid any implementation problems that might impede China from fully benefiting from lifting ownership caps. In particular, our members are concerned with JVs business scope expansion, foreign investor qualification, JV partner qualification and offshore infrastructure leverage.

### JVs Business Scope Expansion

AmCham China welcomes the PBOC’s announcement at the Bo’ao Forum that it will ensure equal treatment for securities JVs and domestic securities firms in terms of business scope. Our members hope the PBOC’s commitment entails allowing securities JVs to undertake the full range of business activities after establishment, including research, securities underwriting and sponsoring, brokerage and principal trading. To ensure that China enjoys the full benefits of this liberalization, JVs should be allowed to apply for all necessary licenses simultaneously, rather than only two at a time every six months, and be able to provide a full range of services immediately. Current restrictions on foreign firms’ business licenses in China have limited foreign investors’ participation, as well their ability to support clients, both Chinese and international, and impeded the development of China’s capital markets. In addition, the CSRC’s rules that allow new securities JVs to apply for four licenses in one tranche will place existing securities JVs at a competitive disadvantage. By ensuring equal treatment and rewarding existing securities JVs with long track records, the CSRC would encourage long-term commitment to China.

### Foreign Investor Qualification

Our members are concerned about the eligibility requirements of foreign shareholders, including that they not be subject to material sanctions in the last three years or be

品和服务是否对国家安全有任何影响。但是，目前还不清楚该关键信息基础设施运营商保护部门是下设于网信办还是网信办是行业监管机构。如果是前者，网信办则将作为审查各行业“国家安全影响”的唯一权力机构，这不利于执行的效率和可操作性，也会因此对关键信息基础设施运营者的日常运营造成负面影响。

## 证券

商会欢迎中国在 2017 年继续努力开放证券行业。这些举措旨在支持消除金融行业风险，并吸引更多的外资和金融专业人才进入中国。

在过去的几年中，中国采取强劲措施开放股市，最显著的是推出沪深通计划。中国还将香港的人民币合格境外机构投资者（RQFII）配额增加至 5,000 亿元人民币。为应对中国开放股市的努力，摩根士丹利国际资本公司于 2017 年 6 月宣布，截至 2018 年 6 月，将增加 222 支中国大陆股票至其指标新兴市场指数。随着摩根士丹利国际资本公司的宣布促使外国持股的中国股票在 2017 年 9 月首次超过 1 万亿人民币，自由化的好处很快由此开始显现。之后在 2017 年 11 月，政府宣布计划将境外证券，期货和资产管理公司在中国的合资企业的股权上限提高至 51%，然后至 100%。随后，中国证券监督管理委员会（证监会）于 2018 年 3 月颁布了“外资证券公司管理办法”草案征询公众意见后，在 2018 年 4 月颁布该办法的定本。这一期待已久的政策是充分发挥中国资本市场潜力的关键一步。

允许外国投资者充分进入国内资本市场将有利于中国提高国内证券行业的竞争力，使其更好地服务于实体经济；帮助中国建立多层次的国际资本市场；促进直接融资，降低融资成本和风险。商会认为，资本市场的开放将成为中国高层领导鼓励的“全面开放”的强劲催化剂。

## 所有权

商会欢迎政府承诺取消中外合资证券公司的所有权上限。商会会员长期以来一直认为，完全所有权将会增加境内外来投资，加强整体市场纪律并增加当地中国公司的专业知识。由于外资金融机构将其子公司和员工从亚洲其他地区迁往中国，完全所有权也将支持上海和其他中国大城市作为国际金融中心的持续发展。此外，完全所有权将最大限度地发挥近期改革浪潮的影响力，并支持中国促进向私营部门分配资本的目标。

在这方面，商会会员欢迎中国证监会颁布的“外商投

资证券公司管理办法”，允许外国投资者设立 51% 所有权的外资证券合资企业，并在三年后将其所有权增加到 100%。商会对中国人民银行保证取消股权上限将很快实现表示欢迎，并希望中国证监会能遵守这一承诺。迅速实施这些规则有助中国尽快取得取消股权所有权上限带来的好处。这也将有助于庆祝 2018 年中国改革开放 40 周年，这给中国带来了巨大的利益。

在确保迅速实施这些规则的同时，中国也应避免任何可能阻碍中国充分受益于取消所有权上限的执行问题。商会会员特别关注合资企业的业务范围扩展，外国投资者资格，合资伙伴资格和离岸基础设施杠杆。

## 合资企业业务范围扩张

商会欢迎中国人民银行在博鳌论坛上宣布将确保证券合资企业和国内证券公司在业务范围上的平等待遇。商会会员希望中国人民银行的承诺能允许证券合资企业在成立后承担全部业务活动，包括研究，证券承销和保荐，经纪和主要交易。为确保中国享有这种自由化的所有利益，应该允许合资企业同时申请所有必要的许可证，而不是每六个月一次并每次只申请两个，另外也应允许合资企业能够立即提供全面服务。目前外国公司在华营业执照的局限限制了外国投资者的参与，及其支持中国和国际客户的能力，因此阻碍了中国资本市场的发展。此外，中国证监会的规则允许新的证券合资公司一次申请四个许可证，这将使现有的证券合资企业处于竞争劣势。通过确保平等待遇和奖励拥有长期记录的现有证券合资企业，中国证监会将能鼓励合资企业对中国的长期承诺。

## 外国投资者资格

商会会员对中国证监会规则中的外国股东资格要求表示担忧。这包括过去三年未受到重大制裁，或因涉嫌违反重大法律和监管规定而接受调查的要求。这些要求在现实中可能不会有效。因为大型跨国公司在全球范围内接受调查或监管调查，或不时遭受制裁并不罕见。商会会员建议罚金和处罚不作为取消资格的依据。只有在任何主营业务许可证被吊销或暂停的情况下，或者任何主要业务线在营业纪录期内暂停时，外方股东才应被取消其资格。

## 合资伙伴资格

商会欢迎中国人民银行最近在博鳌论坛上宣布，关于证券合资企业不会被要求在国内股东中至少有一家证券公

under investigation for alleged major legal and regulatory violations. These requirements may not be effective in reality. It is not uncommon for large international firms, operating globally, to be subject to investigation or regulatory inquiry, or to have been subject to sanctions from time to time. Our members recommend that monetary fines and penalties not be the basis for disqualification. Foreign shareholders should be disqualified only if any of their main business licenses are revoked or suspended, or if any of their main business lines is suspended during the track record period.

### JV Partner Qualification

AmCham China welcomes the PBOC's recent announcement at the Boao Forum that securities JVs will not be required to have at least one securities firm among their domestic shareholders. However, our members urge the authorities to ensure that other proposed rules, such as the CSRC's proposed Administrative Measures on Equity Interests in Securities Companies, do not impede this policy from being implemented. Imposing additional guidelines on the ownership structures of securities firms can become another implementation complication that make it challenging for foreign firms to achieve 51 percent ownership. AmCham China welcomes the CSRC's invitation to comment on its draft Administrative Measures on Equity Interests in Securities Companies, and hopes that the CSRC will take into consideration the following concerns that member firms have over the proposed Measures:

- The proposed financial requirement that controlling shareholders in a JV must have net assets of no less than RMB100 billion is very high, with only a few domestic securities companies, non-financial institutions and foreign investment banks able to qualify. No other major jurisdiction imposes such a high requirement.
- The 33 percent limit on non-financial shareholders' equity interest in a securities company will cause foreign investors to lose much needed flexibility in identifying JV partners.

In addition, the government should act to safeguard foreign securities firms' rights regarding JV partners, which will provide further reassurance to foreign firms looking to expand their China presence. China will be able to attract more capital and resources from international investors and financial institutions if they feel more secure about investing in China. Such safeguards should include allowing foreign broker-dealers to change their domestic partners without constraints on timing or other factors. China should also eliminate non-compete clauses between JVs and their domestic partners, thereby removing de facto limits on JVs' permitted activities and allowing them to provide more services for their onshore clients. Moving quickly to eliminate ownership restrictions and protect investors' rights would also encourage foreign broker-dealers to invest in China sooner.

### Offshore Infrastructure Leverage

Regulators should also allow foreign securities firms to integrate their offshore infrastructures and systems with that of their onshore JVs, with the ability to charge for system support. This would reduce operating costs for foreign investors entering China. Finally, foreign securities firms should be allowed to have 51-percent-owned futures JVs on terms comparable to securities JVs, including the three-year timeline to 100 percent ownership.

### Market Development

AmCham China welcomes the CSRC's joint announcement with the Hong Kong Securities and Futures Commission to increase the daily quotas under both the Shanghai-Hong Kong Stock Connect and the Shenzhen-Hong Kong Stock Connect. As of May 1, 2018, the daily quota for each of the northbound trading links will be adjusted to RMB 52 billion, and the daily quota for each of the southbound trading links will be adjusted to RMB 42 billion.

Our members also welcome the April 11, 2018 announcement by the State Administration of Foreign Exchange (SAFE) to grant a total of US\$90 billion in new quotas for the Qualified Domestic Institutional Investor (QDII) program. By granting additional quotas and resuming new applications, the government will help to meet Chinese institutional investors' increasing demand, allowing them to enhance yields, hedge regional risks and optimize portfolios.

To further boost investment inflows, the government should also make China's capital markets more attractive and straightforward to navigate. As part of these efforts, the government should consider allowing more Chinese securities firms to conduct transactions and facilitate cross-border derivatives and other products. Domestic demand for such offshore products has surged in the past few years. By allowing international securities firms to trade with more onshore parties, the government would enhance the domestic industry's ability to serve Chinese clients' needs for overseas risk management.

The government should also strengthen infrastructure supporting payments and settlement, which will help to internationalize China futures by ensuring that funds flow efficiently across borders. This would also eliminate the large daily fluctuations in the flow of cross-border funds that can heighten financial risk. Currently, existing market infrastructure does not support night futures trading, and often impedes margin payments owing to maintenance. This creates considerable challenges for foreign investors' trading strategies, and forces them to over-fund their onshore accounts, which generates large, destabilizing cross-border flows. To resolve this problem, regulators should align the operating and maintenance hours for payments and settlements systems to the schedule of industry operations.

司的消息。但是，商会会员促请当局确保其他提议的条例，例如中国证监会提出的《“证券公司股权权益管理办法”》，不会阻碍这项政策的实施。对证券公司所有权结构实施额外的指导方针，可能会造成另一个实施的复杂性，使外国公司实现 51% 的所有权面临挑战。商会欢迎中国证监会邀请其对证券公司股权权益管理办法草案发表意见，并希望证监会能将会员公司对拟议办法的以下担忧纳入考量：

- 在合资公司中，控股股东的财务要求必须有不低于 1000 亿元人民币的净资产，这一要求非常高，只有少数国内证券公司，非金融机构和外资银行能够符合条件。没有其他主要司法管辖区规定如此高的要求。
- 证券公司的非财务股东权益的 33% 限制将导致外国投资者在确定合资伙伴方面损失很大的灵活性。

此外，政府应该采取行动，以保护外国证券公司关于合资伙伴的权利，这将为希望扩大其中国业务的外国公司提供进一步的保证。中国将能够吸引更多来自国际投资者和金融机构的资金和资源，如果他们对中国投资感到更加安全的话。这种保障措施应包括允许外国经纪商在不受时间限制或其他因素限制的情况下更换其国内合作伙伴。中国还应取消合资企业与其国内合作伙伴之间的不竞争条款，从而消除对合资企业许可活动的事实限制，并允许他们为其在岸客户提供更多服务。迅速消除所有权限制并保护投资者的权利也会鼓励外国经纪商更快地投资中国。

### **海外基础设施的杠杆作用**

监管机构还应允许外国证券公司将使其境外基础设施和系统与其在岸合资企业整合在一起，并能够收取系统支持费用。这将降低外国投资者进入中国的运营成本。最后，应允许外国证券公司拥有 51% 的期货合资企业，其条款与证券合资企业相当，其中包括三年期限达到 100% 的所有权。

### **市场发展**

商会欢迎中国证监会与香港证券及期货监察委员会发布的联合公告，以提高沪港通和深港通每日配额。截至 2018 年 5 月 1 日，每条北向贸易环节的日配额将调整为 520 亿元，每个南向贸易环节的日配额将调整为 420 亿元。

商会会员也欢迎国家外汇管理局于 2018 年 4 月 11 日公布的合格境内机构投资者（QDII）项目的新配额总额达 900 亿美元。通过增加配额和恢复新的申请，政府将帮助

满足中国机构投资者不断增长的需求，从而提高收益率，对冲区域风险并优化投资组合。

为了进一步推动投资流入，政府还应使中国的资本市场更具吸引力，更容易操作。作为这些工作的一部分，政府应该考虑允许更多的中国证券公司进行交易，并为跨境衍生品和其他产品提供便利。过去几年，国内对此类离岸产品的需求激增。通过允许国际证券公司与更多的在岸公司进行交易，政府将提高国内行业为中国客户海外风险管理需求服务的能力。

政府还应加强基础设施支持支付和结算，这将确保资金有效地跨境流动，有助于中国期货国际化。这也将消除可以增加财务风险的跨境资金流动的每日大幅波动。目前，现有的市场基础设施不支持夜间期货交易，并且由于维护而经常妨碍保证金支付。这给外国投资者的交易策略带来了相当大的挑战，迫使他们为其在岸账户提供过多资金，从而造成了大规模的、破坏稳定的跨境流动。为了解决这一问题，监管机构应该将支付和结算系统的运营和维护时间与行业运营的时间表保持一致。

### **债券**

2017 年，中国债券市场在市场开放方面取得重大进展。香港与中国大陆之间的债券市场准入（债券通）的建立使海外投资者能够通过境外运作在内地银行间债券市场进行投资。这一步标志着中国固定收益市场国际化开始进入新阶段。

商会欢迎政府不断改进市场准入和简化行政审批流程。商会会员指出，现在更广泛的海外投资者参与债券市场活动，包括一级市场认购和二级市场交易。境外投资者类型多元化，涵盖中央银行，商业银行，证券公司，保险公司，资产管理机构和非公司类产品，反映了国际上对中国主权债务工具和企业债务工具的强烈兴趣。

鉴于人民币日益国际化，特别是增加作为国际储备货币的使用，商会预计国内债券市场将继续发展并与国际市场标准保持一致。但是，商会会员认识到国内债券市场的全球化可能是一个漫长的过程。需要更多努力来建立投资者保护机制并提高透明度。此外，综合交易和结算流程仍有待改进，基本会计问题尚待解决。商会认为更有效率的债券市场将促进信贷分配，金融市场也能够更好地分散风险。

## **Bonds**

In 2017, China's bond market made significant progress in market opening. The establishment of mutual bond market access (Bond Connect) between Hong Kong and Mainland China enables overseas investors to make investments in CIBM with offshore operations. This step marked the beginning of a new stage in the internationalization of China's fixed income market.

AmCham China welcomes the government's continuing improvements regarding market accessibility and simplification of the administrative approval process. Our members noted that as a result a wider range of overseas investors now participate in bond market activities, including primary market subscription and secondary market trading. The types of overseas investors are diversified, covering central banks, commercial banks, securities companies, insurance companies, asset management institutions, and non-corporate products, reflecting strong international interest in sovereign and corporate debt instruments in China.

Given the growing internationalization of the RMB, especially its increased use as an international reserve currency, AmCham China expects the domestic bond market to continue to evolve and align its practices with global market standards. However, our members realize that the globalization of the domestic bond market is likely to be a long process. More efforts are needed to create an investor protection mechanism and increase transparency. Moreover, consolidated trading and settlement process are still to be improved, and essential accounting issues are yet to be addressed. AmCham China believes a more efficient bond market will promote credit allocation and enable better diversification of risk in the financial system.

### Protection of Investors

Although China's bond market has experienced substantial growth in size and product varieties over the years, the fundamental mechanisms to deal with defaults have still not been established. AmCham China believes the risks to financial stability continue to increase, and so recommend that regulators adopt international common practices and consider the Corporate Trustee infrastructure framework for investor protection. A Corporate Trustee is an independent supervisor of debt securities, whose role is to act in the interests of investors by working as an independent supervisor regarding security and a custodian of assets. When defaults occur, the trustee should represent the collective interests of investors by law, and ensure that the company offering the investment complies with the trust deed. AmCham China believes that the lack of a sound corporate trustee structure has dissuaded international investors from tapping the corporate bond market in China.

### Accurate Assessment of Credit Risk

The premise for bond investing, especially for credit bonds, is comprehensive and accurate assessment of credit risk. Credit rating for bonds on the Chinese market is generally higher than found on the global market. In the past few years, several default cases have highlighted the mismatch of credit rating against the underlying credit risk of the bond issuer. The credit rating is often found to be lagging behind default. Bond investors cannot preempt any events that are unfavorable to them, as the credit rating does not take into account possible future financial distress. AmCham China urges higher standards of credit rating quality and better enforcement of existing regulations to create a more transparent market environment for all bond investors.

### Simplification of Bond Settlement Mechanisms

Given the participation of various investors, especially foreign institutional investors, it is important that the domestic bond market be efficient in its clearing and settlement mechanisms. As the OTC and exchange traded bond markets are currently separate with a few different Central Securities Depositories, different clearing and settlement rules apply. This creates substantial complications for middle and back office investment operations, which then pose challenges for foreign investors seeking to enter the market. AmCham China recommends that regulators standardize the clearing and settlement rules in different domestic bond markets, and apply mandatory settlement for CIBM to simplify operations.

### Hedging Instruments

Derivatives constitute an essential market instrument for hedging and innovation. AmCham China notes significant market growth on domestic interest rates and FX derivatives in the past few years. However, concerns about the lack of credit risk hedging instruments persist. Although NAFMII launched the Credit Default Swap (CDS) product in late 2016, the effectiveness of credit risk protection by this product is limited to bonds registered at NAFMII. This cannot cover the full spectrum of credit events by the single corporate name, as in the international market. In turn, the trading volume of domestic CDS was very limited in 2017. AmCham China recommends that regulators modify the CDS product design in line with the international norm. If properly traded and prudently supervised, this will not only address investors' concerns over credit risk pricing in the secondary market, it will also help improve overall risk management efficiencies for Chinese companies and investors.

### Panda Bond Market

In the past few years, the Panda Bond market (i.e., RMB-denominated bonds issued by foreign borrowers in Mainland China) has been growing gradually in terms of size and issuer varieties. AmCham China notes that over-

## 投资者保护

虽然中国债券市场多年来在规模和产品品种方面经历了大幅增长，但处理违约的基本机制尚未建立。商会认为金融稳定面临的风险继续增加，因此建议监管机构采用国际通用做法并考虑公司受托人基础架构框架以保护投资者。公司受托人是债务证券的独立监管人，其职责是通过担任债券独立监管人和资产托管人，为投资者的利益行事。发生违约时，受托人应当依法代表投资者的集体利益，并确保提供投资的公司遵守信托契约。商会认为，缺乏健全的企业受托人结构阻碍了国际投资者进入中国企业债券市场。

## 准确评估信用风险

债券投资（尤其是信用债券）的前提是对信用风险进行全面准确的评估。中国市场债券的信用评级一般高于全球市场。在过去几年中，一些违约案例突显了信用评级与债券发行人的潜在信用风险之间的不匹配。信用评级往往滞后于违约发生。债券投资者不能预先阻止任何对他们不利的事件，因为信用评级没有考虑到未来可能出现的财务困境。商会促请更高标准的信用评级质量和更好地执行现有法规，为所有债券投资者创造更透明的市场环境。

## 债券结算机制简化

鉴于市场有不同投资者的参与，特别是外国机构投资者，因此国内债券市场在清算和结算机制方面的效率非常重要。由于场外交易和交易所交易债券市场目前与一些不同的中央证券存管机构分开，所以需要适用不同的清算和结算规则。这对中、后台部门的投资运作造成了很大的困难，这对于寻求进入市场的外国投资者带来挑战。商会建议监管机构规范不同国内债券市场的清算和结算规则，并对内地银行间债券市场实施强制结算，以简化操作。

## 对冲工具

衍生品构成对冲和创新的重要市场工具。中国美国商会在过去几年中注意到国内利率和外汇衍生工具的巨大市场增长。然而，对缺乏信用风险对冲工具的担忧依然存在。虽然中国银行间市场交易商协会于2016年底推出了信用违约掉期（CDS）产品，但该产品的信用风险保护的有效性仅限于在中国银行间市场交易商协会注册的债券，而不能像国际市场上那样，通过单一公司名称来覆盖全部信用事件。不过国内信用违约掉期的交易量在2017年非常有限。商会建议监管机构根据国际标准修改信用违约掉期产品设

计。如果可以交易得当，审慎监管，这不仅能够解决投资者对二级市场信用风险定价的担忧，还有助于提高中国企业和投资者的整体风险管理效率。

## 熊猫债市场

在过去几年中，熊猫债券市场（是指境外借款人在中国境内发行的以人民币计价的债券）在规模和发行人种类方面逐渐增加。商会指出，全球不同地区和行业的海外实体，例如来自加拿大不列颠哥伦比亚省、波兰、德国戴姆勒、法国威立雅和招商局国际有限公司（香港）等已在银行间市场发行人民币债券，以期推进其国际化。截至2017年6月底，共有26家海外发行人向中国银行间市场交易商协会注册熊猫债券，成功发行35支债券，共计714亿元人民币。这种市场开发促进了全球经济的长期增长，对于为外国实体提供有效的融资平台来支持其融资需求也至关重要。为了进一步发展这一重要市场，需要提高境外发行人的参与。商会建议中国政府接受更多的熊猫债券国际会计标准，特别是美国和英国的会计准则，以便更多的外国发行人参与该市场。

## 信用评级

商会注意到在2017年向国际信用评级机构（CRA）开放信用评级市场方面的重大进展。商务部和国家发改委于2017年6月28日发布的外商投资目录将信用评级从负面清单中删除。中国人民银行于2017年7月1日发布7号公告，允许国际信用评级机构通过中国大陆或境外的实体从事银行间债券市场信用评级业务。中美百日计划也概述了信用评级机构市场开放的有关情况，其中明确，“中方将在2017年7月16日前允许在华外资全资金融服务公司提供信用评级服务”。

中国资本市场的开放，包括信用评级机构市场令人鼓舞。商会也期待发布有关开放更多市场行业的详细规则。预计这些规则将为指导信用评级机构市场的成功开放提供监管可预测性。然而，2016年10月发布的中国信用评级机构行业法规草案尚未最终确定。该法规对于国际信用评级机构了解中国的监管环境并为其进入市场做好准备至关重要。鉴于此，商会会员期待该法规早日完成。

在放宽对国际信用评级机构的市场准入限制方面迄今取得的进展将有助于增加竞争和提高评级质量。然而，随着开放过程中更加市场化的改革，审视评级的监管使用情况并重新关注信贷风险评估也同样重要。例如，目前国内



seas entities from different regions and industries around the world, such as British Columbia in Canada, Poland, Germany's Daimler, France's Veolia and China Merchants Holdings (Hong Kong), have issued RMB bonds in the interbank market with a view to advance its internationalization. By the end of June 2017, a total of 26 overseas issuers had registered Panda Bonds with NAFMII, and 35 bonds had been issued successfully, totaling 71.4 billion RMB. Such market development promotes the long-term growth of the global economy, and is also crucial for providing foreign entities an effective capital-raising platform that supports their financing needs. More participation of foreign issuers is needed to further develop this important market. AmCham China recommends that the Chinese government accept more international accounting standards for Panda bonds, especially US and UK accounting rules, so as to enable more foreign issuers to participate in this market.

### *Credit Ratings*

AmCham China noted significant progress in opening the credit rating market to international Credit Rating Agencies (CRA) in 2017. The Foreign Investment Catalogue issued by MOFCOM and NDRC, effective June 28, 2017, removed CRAs from the negative list. The PBOC issued Circular 7 on July 1, 2017, allowing international CRAs to conduct credit rating business for interbank bond market either through an entity on Mainland China or one outside Mainland China. The opening of the CRA market is also outlined in the US-China 100 Day plan, which stated that by July 16, 2017, "China is to allow wholly foreign-owned financial services firms in China to provide credit rating services."

The opening of the Chinese capital market, including the CRA market, is encouraging. AmCham China also looks forward to the issuance of detailed rules regarding the opening of additional market sectors. Such rules are expected to provide the regulatory predictability for guiding the successful opening of the CRA market. However, the draft regulation on the Chinese CRA industry, which was released for public comment in October 2016, has yet to be finalized. The regulation is critical for international CRAs to understand the regulatory environment in China, and to prepare for their entry into the market. As such, our members look forward to its finalization.

The progress made to date on relaxing market access restrictions for international CRAs will help increase competition and improve ratings quality. However, it will be equally important to review the regulatory use of ratings and refocus credit risk assessment along the more market-oriented reform which is happening along this opening up. For example, certain provisions in current domestic CRA regulations require credit rating floors (of AA) for bond issuance or purchase. Such requirements skew incentives and eventually lead to rating shopping and rating inflation problems. International CRAs can serve as a bridge for capital flows

from international investors to the Chinese domestic market which will enhance its development.

### *Custody Service*

#### *QDLP Fund Administrative Service*

In April 2012, the Shanghai Municipal Government Financial Services Office (Shanghai FSO) released the Implementation Measures on Pilot Program of Qualified Domestic Limited Partners (QDLP) in Shanghai (revised in 2017), with pilot program launched in 2013. According to the Shanghai FSO Measures, approved global asset managers who set up wholly-owned subsidiaries in China are allowed to raise RMB funds on a private basis and make offshore investments via QDLP quotas. To help China's opening-up and foreign funds to enter the Chinese market, foreign fund administrators joined the pilot program to provide Fund Accounting and Transfer Agent services.

In March 2017, the Asset Management Association of China (AMAC) released the Administrative Measures on Private Investment Fund Service Business (AMAC Measures), highlighting the requirements on unit registration, valuation calculation and information technology system services. The AMAC Measures require fund administrators to become members of AMAC and complete certain registration procedure. However, the new requirements have become obstacles for all foreign fund administrators to on-board any of their new business. Currently, none of the foreign fund administrators are considered as eligible candidates to register with AMAC under the new requirements.

First, according to Article 3 of the AMAC Measures, fund administrators may not subcontract fully or partially (fen bao or zhuan bao) the fund business outsourcing services it has undertaken. This requirement is inconsistent with foreign fund administrators' current operating model. It substantially decreases operating efficiency without reducing any system risk. It is known that the QDLP fund by nature is a local private fund, serving as a feeder fund that invests in an offshore master fund. It is a matured model worldwide that foreign fund administrators service QDLP funds through the same operating system via different affiliates. Under this model the subject operating teams are domiciled in different locations as affiliates under same parent company. Importantly, this operating model will not increase any level of system risk but increase efficiency. AmCham China recommends removing the restriction in Article 3 and allowing subcontracting by fund administrators to continue to provide service for existing and new QDLP funds.

Second, the requirements on local infrastructure and servicing capacity in Chapter 6 raise concerns among foreign fund administrators. The QDLP program is for offshore investment with investors' records remaining overseas, while foreign fund administrators' system, data

信用评级机构法规中的某些规定对债券发行或购买设置信用评级下限 (AA)。这种要求会扭曲激励机制, 最终导致评级选购和评级虚高问题。

国际信用评级机构可以成为国际投资资本向中国境内市场流动的桥梁, 从而促进其发展。

## 托管服务

### “合格境内有限合伙人试点计划 (QDLP)” 基金行政服务

2012年4月, 上海市金融服务办公室在上海发布了《“上海开展合格境内有限合伙人试点计划工作的实施办法”》(2017年修订), 并在2013年启动了试点计划。上海市金融服务办公室的《“办法”》允许在中国境内设立全资子公司的全球资产管理公司向境内投资者募集人民币资金, 并通过 QDLP 配额进行境外投资。为帮助中国的对外开放和外资基金管理公司进入中国市场, 外资基金行政服务管理人加入了该试点计划, 提供基金会计和转账代理服务。

2017年3月, 中国证券投资基金业协会(简称“AMAC”)发布了《“私募投资基金服务业务管理办法”》(AMAC 办法), 强调了单位登记, 估值计算和信息技术系统服务的要求。《AMAC》办法要求基金行政服务管理人完成特定的注册程序并成为中国证券投资基金业协会的会员。然而, 新的办法成为所有外资基金服务行政管理人开展新业务的障碍。目前根据新的办法, 没有任何外资基金行政服务管理人能够符合 AMAC 注册条件成为注册会员。

首先, 根据《AMAC》办法第三条的规定, 基金行政服务管理人不得分包或转包其从事的基金服务业务。这一要求与目前国际上基金行政服务管理人的运作模式不一致。目前的模式在不降低任何系统风险的情况下大幅降低运营效率。众所周知, QDLP 基金本质上是作为本地的私募基金投资于离岸市场的母基金。作为国际上一个成熟的模式, 外资基金行政服务管理人通过统一运营系统的不同分支机构为 QDLP 基金提供服务。在这种模式下, 相对应的运营团队位于不同地点, 作为母公司下属的分支机构。重要的是, 这种运营模式不会增加任何系统风险水平, 但会提高效率。商会建议取消第3条中的限制, 允许基金行政服务管理人分包或转包, 继续为现有和新增 QDLP 基金提供服务。

其次, 办法第6章对境内基础设施和服务能力的要求引起外资基金行政服务管理人的关注。QDLP 计划目的是

用于境外投资, 同时将投资者的数据记录保存在海外, 目前外资基金行政服务管理人的系统, 数据中心和服务器也位于境外。外资基金行政服务管理人不太可能将所有服务系统、数据中心和服务器保存到境内, 这将大大增加运营成本。因此, 商会建议在现行体系, 基础设施和运营模式下继续开展 QDLP 基金行政管理服务。

### 分行提供托管服务

2018年2月, 原中国银行业监督管理委员会发布《“关于外资银行行政许可事项实施办法”》。根据《“办法”》的规定, 外资法人银行 (LIB) 和外资分行均获准提供银行合格境内机构投资者 (QDII) 服务, 银行 QDII 托管服务和证券投资基金托管服务, 不需要获银监会批准, 只需要向银监会报备。

但若涉及证券投资基金托管服务, 部分托管业务仍需证监会批准。证监会2013年4月发布的《“证券投资基金托管业务管理办法”》禁止外资银行分行提供托管服务。作为门槛, 证监会要求托管人连续3年持有20亿元净资产作为资本承诺。托管银行仅提供专业领域的特定服务, 为此成立外资本地法人银行, 从而做出巨大资本承诺, 对托管银行而言造成了巨大的运营障碍和不公平的竞争环境。在香港和新加坡等其他主要市场, 通过分行形式运营而无需追加资本承诺是许多全球托管人的既定业务模式。

### 在股票通项目中加入借出代理人

目前, 借出代理人和托管人不能借出境外投资者通过北向沪港通和深港通持有的 A 股。然而, 借出股票在国际市场中至关重要, 因为它提供了进行更多结构化交易的机会, 并使客户能够通过战略性借出最大限度地利用其证券。这可以积极支持中国资本市场和 A 股市场的自由化。

为提高透明度, 香港交易所创建了一个称为经纪商客户指定号码 (BCAN) 的系统, 该系统将于2018年第三季度开始上线。这将涵盖交易所参与者 (EP) 所进行的所有活动, 但不包括借出代理人的任何活动。大多数情况下, 交易所参与者不能借出, 因此目前交易所和监管机构可以获得的信息很少。

商会建议中国证监会根据《市场参与者中国互联信息手册》第3.35.5节(第26-27页)修改股票通北向框架, 以加入: “借出代理人: 持有牌照的银行、证券公司、基金管理公司或托管机构, 作为其常规业务的一部分, 安排证券贷款, 并代表客户 - 所有者与借款人协商条款。”作

center and servers currently are located offshore. It is unlikely that foreign fund administrators will locate all servicing systems, data centers and servers onshore which would greatly increase operating cost. As such, AmCham China recommends continuing QDLP fund administrative services under the current system, infrastructure and operating model.

### Custodian Service via Branches

In February 2018, the former China Banking Regulatory Commission (CBRC) released the Implementation Measures on Administrative Licensing Items concerning Foreign-Funded Banks. According to the Measures, Foreign Local Incorporated Banks (LIBs) and PRC branches are both allowed to provide bank Qualified Domestic Institutional Investors (QDII) services, bank QDII custody services, and securities investment fund custody services, subject to CBRC reporting but no longer subject to approval.

However, certain custody businesses are still subject to CSRC approval if related to securities investment fund custody services. The CSRC's April 2013 Administrative Measures for Securities Investment Fund Custody Business prohibits custody services provided by branches of foreign banks. As a threshold, the CSRC requires custodian service providers to hold 2 billion yuan of net assets as capital commitment for 3 consecutive years. The large capital commitment for or establishment of a LIB creates a huge barrier and unlevel playing field for the narrow set of services offered by custody banks. In other major markets such as Hong Kong and Singapore, operating through branches without additional capital commitments is an established business model for many global providers of custody service.

### Inclusion of Agent Lenders in Stock Connect Programs

Currently, agent lenders and custodians are excluded from lending China A-shares owned by offshore investors via the north-bound Shanghai and Shenzhen-Hong Kong Stock Connect infrastructure. However, agency lending is critical in international markets because it gives lenders the opportunity to carry out more structured trades and enables customers to maximize the use of their securities through strategic lending. This can positively support the liberalization of China's capital and A-share markets.

In an effort to improve transparency, the Hong Kong Exchange (HKEX), has created a structure called a Broker Client Assigned Number (BCAN) which will come into practice in Q3 2018. This would capture all activity conducted by an Exchange Participant (EP) but would exclude any activity of Agent Lenders. For the most part EPs do not have positions to lend so currently very little transparency is available to the Exchange and regulators.

We recommend that the CSRC modify the Stock Connect north-bound framework under Section 3.35.5 of the China Connect Information Book for Market Participants ((Page 26-27) to include: "Agent Lender: an entity, licensed as any of a bank, securities company, fund manager or a custodian, that as part of its usual business arranges a securities loan and negotiates the terms with the borrower on behalf of a customer-owner." As a baseline reference, the Bank of International Settlement's (BIS) Committee on Payments and Settlement Systems – a glossary of terms used in payments and settlements systems – defines an Agent as: an entity, such as a fund manager or a custodian, that undertakes a securities loan and negotiates the terms with the borrower on behalf of a customer-owner.

In the spirit of good market practice and to help facilitate transparency, any 'Agent Lender' wishing to participate in securities lending must register as an 'Approved Agent Lender' (AAL), with the HKEX and be duly assigned an Agent Lender equivalent identifier (e.g. BCAN). All EP's, Affiliates of EP's and AAL's must provide weekly reporting of transactions.

## Recommendations

### *For the Chinese Government:*

#### Commercial Banking

- **Accelerate market opening to allow foreign banks' greater participation. Allow foreign banks to establish risk-based information technology regimes, rather than product-based regimes.**
- Simplify regulatory reporting regime and at the branch level, and allow flexibility to foreign banks to decide whether to provide input as to the reporting or survey requests put forward by the local government or local regulatory agencies, which are not directly linked to banking operations or risk controls.
- Continue the efforts in Simplified Administration and Empowerment (简政放权), and give foreign banking institutions some flexibility in fulfilling the regulatory requirements such as in the areas of branch location or personnel changes so long as sufficient risk controls are in place.

#### Securities

- Eliminate ownership cap for securities JVs with further consideration of securities JVs business scope expansion, JV partner qualification, foreign investor qualification, and offshore infrastructure leverage, etc.

为基准参考，国际清算银行（BIS），付款和结算系统委员会 – 付款和结算系统中使用的术语词汇表（2003年3月第7页）将代理人定义为：一个实体，如基金经理或托管人，并代表客户 – 所有者与借款人协商条款。

本着良好的市场惯例和有利于透明度的原则，任何希望参与证券借贷的“借出代理人”必须在香港交易所登记为“经批准的借出代理人”（AAL），并按时获得借出代理人等效标识符（如BCAN）。所有交易所参与者，交易所参与者和经批准的借出代理人的附属机构必须每周报告交易情况。

## 建议

### 对中国政府：

#### 商业银行

- 加快市场开放，让外资银行更多参与。允许外资银行建立基于风险，而非基于产品的信息技术体系。
- 简化监管报告制度，并在分行一级允许外资银行灵活地决定是否就当地政府或地方监管机构提出的报告或调查请求提供意见，这些请求与银行业务或风险控制无直接联系。
- 继续努力简政放权，并为外国银行机构提供一些灵活性，以满足监管要求，例如在分支机构或人员变动方面，只要有足够的风险控制措施即可。

#### 证券

- 进一步考虑证券合资企业的业务范围扩张，合资伙伴资格，外国投资者资格以及境外基础设施杠杆等，取消证券合资企业的所有权上限。

#### 债券

- 进一步调整市场惯例使之符合全球标准，建立公司受托人结构以进一步保护投资者。

#### 信用评级

- 在市场和产品上实施信用评级机构开放。根据国际共识和最佳实践，采用新的或者经过修订的针

对信用评级行业发展的规定。

#### 托管服务

- 允许基金行政服务管理人分包或转包；在现行体系，基础设施和运营模式下继续开展 QDLP 基金行政管理服务。
- 修改中国银监会第 12 号通知和中国证监会“证券投资基金托管业务管理办法”，允许外资分行提供全面的托管服务。

#### 人民币国际化

- 加强政策沟通来引导市场预期；在跨境投资和贸易中，尤其在一带一路项目中推广使用人民币。

### Bonds

- Further align market practice to global standard, establish the corporate trustee structure to further protect investors.

### Credit Ratings

- Implementation of CRA opening up across markets and products. Introduce new or amended regulations concerning development of the credit rating sector consistent with international consensus and best practices.

### Custodian Services

- Allow subcontracting by fund administrators; continue QDLP fund administrative services under the current system, infrastructure and operating model.
- Modify CSRC Administrative Measures for Securities Investment Fund Custody Business to allow foreign branches to provide the full scope of custody services.

### RMB Internationalization

- Improve policy communication to help guide market expectations; promote use of RMB in cross-border investment and trade, particularly in Belt and Road projects.



# Civil Aviation

## Introduction

**A**s China's air traffic continues to grow at record levels, the country is projected to become the world's largest aviation market by 2025 or earlier. AmCham China commends China for the significant growth of its aviation industry, its plans for future development, and its outstanding safety record. The growth of the industry has benefitted both China and the US.

However, as China continues its rapid growth, the country faces many challenges, most notably severe air traffic congestion resulting in poor punctuality and other related inefficiencies. This chapter discusses specific areas worthy of further attention by the Civil Aviation Administration of China (CAAC) and other Chinese government stakeholders. Continued system change at the local, regional and national levels is fundamental for China to realize its full aviation potential. Measures that are critical for achieving greater maturity in China's operational capabilities throughout its aviation system include expanding access to airspace for commercial operations, improving procedural and institutional methodologies to encourage innovation, and encouraging the multi-disciplinary collaboration that is necessary for maintaining China's excellent safety record during this period of unprecedented growth.

The growth of China's aviation sector is a direct result of the country's gradual transition to a consumption-based economy, the growing importance of the service sector, and China's recognition of the important role played by civil aviation. These factors, as well as other growth areas, such as an expanding middle class, help drive the expected need for more than 7,240 new airplanes valued at an estimated US \$1.085 trillion in the next 20 years, according to Boeing's Current Market Outlook for China. During this same period, it is forecast the Chinese economy will grow at 4.9 percent annually, with 6.2 percent annual growth in airline passenger numbers.

China's top three airlines are already among the world's top 10 carriers in terms of passenger volume. In 2017, China's air passenger trips rose 12.6 percent year-on-year to 549 million, and cargo and mail turnover grew 6.6 percent to 7.12 million tons. Work was conducted on 260 new or on-going airport projects, and 11 new airports were finished. In line

with China's 13th Five-Year Plan (2016-20), approximately 74 new commercial airports will be built to accommodate the country's anticipated growth in air travel. By 2020, China is expected to have more than 500 General Aviation (GA) Airports and over 5,000 GA aircraft. As of the date of publication, China had 81 certified GA airports.

US companies are important suppliers of aviation technology, services, and expertise, and have committed significant resources to help China reduce its capacity constraints and meet a wide variety of training needs. The US Federal Aviation Administration (FAA) and the Civil Aviation Administration of China (CAAC) enjoy a close partnership that yielded benefits to both sides for many years.

In 2017, CAAC and FAA signed the Implementation Procedures for Airworthiness (IPA) under the US-China Bilateral Aviation Safety Agreement (BASA). The BASA IPA is a framework that can be used by the FAA and CAAC to validate the airworthiness of aviation products for operation in their respective aviation systems. The BASA IPA represents a new, comprehensive risk-based approach that continues long-standing FAA-CAAC cooperation in this area.

For more than 14 years, CAAC, FAA, the US Trade and Development Agency (USTDA), and the Transportation Security Administration (TSA) have worked together to promote US-China aviation cooperation through a special public-private partnership known as the US-China Aviation Cooperation Program (ACP) administered through AmCham China.

To assist with China's growth, ACP annually arranges millions of dollars of technical assistance, training, and collaboration with help from ACP's 40 US member companies. This work produces win-win benefits with aviation playing an important and growing role in the overall US-China economic relationship. Aviation products and services constitute one of the top categories of US exports to China with aircraft the largest category of manufactured goods.

In this chapter AmCham China addresses select issues in China's aviation development that we believe require the attention of Chinese aviation officials. These include important subjects related to institutional capabilities being commensurate with current and future growth,

# 民用航空

## 引言

**中**国航空流量持续高速增长，预计最迟到 2025 年中国将成为全球最大的航空市场。中国美国商会（商会）对中国航空业的评价为：增长显著、前景广阔、安全记录良好。因此，中国航空业的发展有利于中美两国。

然而，随着中国持续快速增长，中国也面临着许多挑战，特别是目前严重的空中交通拥堵问题，导致航班延误频发，运行效率低下。本章将讨论中国民用航空局以及其他政府机构在未来值得注意的一些关键因素。从中央、区域和地方三级政府层面不断完善体系建设是充分挖掘中国航空业潜力的必要条件。要切实推动中国航空运营体系的进一步完善，需重点落实以下措施：进一步拓展商用空域、优化流程和完善体制机制建设、鼓励创新与推动各相关方协同合作。以上措施将有助于中国航空业在当前历史性增长时期保持强劲稳定的发展。

中国航空业的快速发展是中国向消费型经济逐步转型、服务业地位显著提高，以及中国对民航业重视程度日益加深的结果。以上因素，再加之中产阶级群体不断扩大等其他增长因素，拉动了中国航空业的需求增长。据波音发布的《中国市场当前展望》，未来 20 年内，中国市场需求预计将达到 7240 架飞机，总价值预计将达 1.085 万亿美元。同期，中国经济预计将以每年 4.9% 的速度增长，中国航空旅客人次将以每年 6.2% 的速度增长。

关于客运量，中国的三大航空公司现已跻身全球十大航空运营商。2017 年，中国的航空客运人次同比增长 12.6%，达 5.49 亿人次，航空货邮吞吐量增长 6.6%，达到 712 万吨。新增及在建机场项目 260 项，11 个新机场竣工。根据中国“十三五”规划纲要，2016 至 2020 年期间，中国计划新建机场项目 74 个，以满足中国航空业的增长预期。到 2020 年，中国预计将拥有 500 多个通航机场，通航

飞机数量将超过 5000 架。截至本《白皮书》发布之日，中国已拥有 81 个认证通航机场。

美国公司为中国提供了大量航空技术、服务和专业支持，投入了大量资源以帮助中国航空市场不断扩容，并提供了各种丰富的专业培训课程。美国联邦航空局（FAA）和中国民用航空局（CAAC）多年以来一直保持密切合作，实现了互利共赢。

2017 年，中国民用航空局（CAAC）和美国联邦航空局（FAA）共同签署了《中美双边航空安全协议》下的《适航实施程序》（简称 BASA IPA）。BASA IPA 是美国联邦航空局和中国民用航空局共用的一份合作框架，用于相互认可各自航空体系内航空产品在两国航空市场的适航性。《中美双边航空安全协议》下的《适航实施程序》提供了一种基于风险的综合性新方法，它将进一步推动美国联邦航空局和中国民用航空局在适航领域的长期合作。

14 年来，中国民用航空局、美国联邦航空局、美国贸易发展署以及美国运输安全局一直通过中美航空合作项目（ACP）这一特殊的政企合作平台携手合作。该项目由商会监管。

为促进中国航空业的持续增长，在中美航空合作项目的 40 家美国成员公司的协作下，中美航空合作项目每年都会为中国航空业提供价值数百万美元的各种技术援助、培训与合作。这些项目推动了中美两国的合作共赢，航空业发展对促进中美两国实体经济起到作用越来越不容忽视。航空产品与服务在美国对华出口中占有非常大的比重，其中制造业中更以飞机为首屈一指。

在本章中，商会将针对中国航空业发展现状与重点问题提出自己的见解，希望能对中国民航业监管机构有所帮助。主要内容涉及以下重要领域：前瞻性思维，完善机制建设，目前中国航空监管者面临的主要挑战，可持续发展，航空公司运营、标准和认证，以及通用航空与公务机航空。



on-going regulatory challenges, sustainability, air carrier operations, standards and certification, and general and business aviation.

## Ongoing Regulatory Challenges

### *Reforming China's Airspace System and Improving Operational Efficiency*

Reforming China's national airspace management system is critical to meeting China's aviation growth, enabling improved system efficiencies, and reducing the environmental impact of the aviation industry. Achieving efficient, system-wide airspace utilization and management by expanding and enhancing China's current aviation system capabilities will also help to reduce fuel burn, air pollution, flying time, and delays. Such measures will simultaneously accommodate new air carrier entrants, growth in airplane operations, and new and expanded routes.

The surge in air traffic has significantly increased pressure on China's large and complex airspace system. Although its system has a world-class safety record and continues to grow in passenger and cargo aircraft operations, signs of stress are still evident, such as persistent delays at airports throughout the country and a continuing shortage of slots. These delays and slot shortages are due primarily to limits on the use of China's national airspace for civil aviation purposes, attendant inefficiencies in current airspace operations, capacity management that relies on a command and control structure, and the multiple consequences from congested airspace when arriving at or departing from airports.

Measures taken recently by CAAC have led to 'penalty boxes' being imposed on select airports with poor on-time performance. The 'penalty box' provisions do not permit charters, extra-sections, or new scheduled operations until air traffic control, airports, and air carriers improve on-time performance.

AmCham China welcomes CAAC's plans to adopt and implement a national Air Traffic Flow Management (ATFM) and System Wide Information Management (SWIM) utilizing a collaborative decision-making model (CDM). However, there is still a need for more system reform that focuses on flexible, safe, and efficient system management and adapts best practices from around the world to accommodate China's unique needs and structure. This will in turn allow progress to be made in delay prevention rather than delay response, thus catering for anticipated growth in the aviation system.

### *Climate Change Obligations: Advance ECER and Sustainability*

Climate change is an important global issue. CAAC has since 2011 issued guidance to accelerate energy conservation and emissions reduction (ECER) in the aviation industry. This guidance includes goals to reduce energy consump-

tion and carbon dioxide emissions through technology and management innovation. US companies have been pleased to see progress in specific areas such as fuel savings and efficiency, development of aviation biofuels, new incentives for clean fuel ground service equipment, and the installation and application of new technologies.

Our members recognize the continued increase in state-of-the-art building materials and green airport building standards. However, more efforts could be undertaken to raise awareness about the impact of construction processes on energy issues and the environment. Given the development of new airports and expansion of existing airports in first and second-tier cities, the adoption of standards for clean construction equipment and processes would lead to significant improvements in local air quality.

Progress and attention on effective and efficient national airspace system management will also have direct benefits on capacity, energy savings, and emissions reduction, while maximizing the benefits of ECER-related programs. Well-planned airfield taxiway and gate layout design can substantially reduce aircraft taxi times. ATMB procedures and airline operations that utilize the capabilities of aircraft equipped with the latest navigation technologies can offer greater benefits for aviation sustainability.

AmCham China recommends that CAAC and ATMB continue the effective utilization of NextGen (US) and Single European Sky ATM Research (SESAR) (EU) technologies, such as work on procedures, measurements and reward systems to encourage all participants in China's aviation system, including air traffic centers, airlines and airports, to increase their use of new procedures, in order to gain efficiency in operations through these technologies.

### *Air Carrier Operations and Issues*

China is one of the largest markets for US passenger and air cargo airlines and vice versa. However, reform of the sector has not kept pace with the growing needs of the industry. Although there was some modest improvement in 2017, many of China's larger airports have some of the worst on-time arrival and departure performances compared to other airports of a similar size around the world. AmCham China recommends the following measures to strengthen the air transportation sector. Many of these recommendations will benefit Chinese airlines, as well as the industry overall.

#### Route Operational Flexibility

AmCham encourages China to allow more route operational flexibility, such as permitting operators to plan and operate via all entry / exit points, instead of limiting them to the current city pair restrictions. International operators do not currently have a procedure to make changes to a route based on changing conditions, such as weather,

## 现存监管挑战

### 改革中国空域管理体系，提高运营效率

改革中国的国家空域管理体系对满足中国日益增长的航空发展需求至关重要，并有助于提高体系效率，同时减少航空业对环境的负面影响。通过加强中国现有航空体系来实现高效、全系统范围的空域利用和管理，也将帮助减少燃料消耗、空气污染、飞行时间和航班延误。这些措施也同样有助于新航空公司数量增长、促进飞行业务增长和新航线拓展。

空中交通流量激增对中国复杂的大型空域体系带来了巨大压力。尽管中国空域体系的安全性享有全球美誉，其客货运流量也增长迅猛，但其面临的压力亦十分显著，比如全国范围内大量航班延迟和长期的航班时刻短缺。这些航班延迟和时刻短缺主要是由于中国国家空域对民航的使用限制、低效的空域管理，管制过于严格，以及航班起降过于集中于有限的拥堵空域等多重后果。

中国民用航空局最近采取措施，对某些航班延误严重的机场进行处罚。处罚条例要求在空管、机场和航空公司未能有效提升航班准点率的情况下，不允许包机运营，也不允许增加新的航班运营。

商会赞同中国民用航空局通过协同决策系统（CDM），来采用和实施全国航空流量管理和全系统信息管理的方案。商会同时也认为，中国仍需加深全球范围的优秀实践案例的了解，不断进行系统优化与改进，使其更为灵活、安全和高效，并适用于中国独特的组织架构以满足自身发展需求。同时，中国还应采取更为前瞻性的眼光与措施，不仅注重解决航班延误后的应急响应，还应着力防患于未然，提前避免航班延误的发生，以更好的满足其航空增长的需求。

### 气候变化责任：推动节能减排和可持续发展

气候变化是一个重要的全球性问题。中国民用航空局自 2011 年《指导意见》发布以来，一直致力于推动航空业节能减排工作。该指导意见包含通过技术和管理创新来减少能源消耗和二氧化碳排放的目标。美国公司很高兴看到中国航空业已经在某些领域取得一定进步，如燃料节省和效率提高、发展航空生物燃料、推动清洁燃料地面服务设施发展，以及新技术产品的安装和应用。

美国企业注意到中国航空业在先进建筑材料和绿色机场建设标准方面的不断发展。然而，中国航空业仍然需要

努力提高对施工建设过程中的能源问题和环境影响的意识。鉴于中国一二线城市新建、扩建机场项目的飞速发展，对建设施工的设备、流程采用绿色标准将大大改善当地空气质量。

关注并提高中国空域系统管理效率将为扩容、节能和减排带来直接效益，同时也能有效实现节能减排相关项目效益的最大化。合理的机场滑行道和登机口布局可以大大减少飞机的滑行时间。空管和航空公司采用最新导航技术设备将有助于进一步推动航空可持续发展。

商会建议中国民用航空局和空中交通管理局继续有效利用新一代（美国）和欧洲天空一体化航空流量管理研究技术，包括流程、评估方式和奖励机制，以鼓励所有参与者积极参与到中国的航空系统中来，包括空管、航空公司和机场，以推动流程优化，并通过新技术提高运营效率。

### 航空公司的运营和问题

对美国客运和货运航空公司而言，中国是最大的市场，反之亦然。然而，该行业的改革并未跟上行业日益增长的需求。虽然 2017 年有所改善，与全球其他同规模的机场相比，中国的大型机场航班延误情况十分严重。商会建议通过以下措施加强航空运输业发展。其中许多建议都对航空公司以及整个航空业有益。

### 提高航线运营灵活性

商会鼓励中国提供更多的航线运营灵活性，比如允许运营商通过所有的出入口来进行规划和运营，而非将其限制在当前的城市。国际运营商目前还没有基于天气等航行条件变化的航线变更处理流程，同时也没有涉及被军事管制拒绝时的一体化处理流程。

及时的策略性航线重新规划可以减少机场拥堵和延误，并为客户提供更好的服务。以上措施需要运营商、空中交通管理局以及协同决策体系流程中的军队部门的密切合作。

### 完善天气预报系统

高质量的天气预报，充足的分析处理时间以及对天气预报的有效利用，对解决航班准点问题至关重要。由于大部分航班都是提前两个小时出发，即便目的地天气恶劣到无法着陆，也不大可能在起飞前延误或取消。随后，这些航班将进入等待状态或者被转移到备选机场，从而导致燃料问题。调控员和飞行员的工作量增加，从而降低了安全边际量，导致不必要的燃料使用和污染。在能见度很低的

without a complex process involving military approvals that are subject to denial.

Tactical and timely re-routes reduce airport congestion and delays and provide better service to the customer. Such measures would require close coordination between operators, ATMB and the military in a CDM process.

### Improved Weather Forecasting

Improved weather forecasting and effective use of forecasts with adequate lead time are essential for solving issues related to punctuality. As most departures are committed more than two hours in advance, it is impossible to delay or cancel flights before take-off, even if severe weather at the destination makes it impossible to land. These flights then enter holding patterns or are diverted to alternative airports, resulting in fuel issues. Controller and pilot workload increases, which in turn decreases safety margins, and leads to unnecessary fuel usage and pollution. The ability to operate when there is very low visibility (fog) is dependent on the implementation of ILS or GBAS systems at major airports that support Category 2 and, more importantly, Category 3 operations (visibility as low as 75 meters of Runway Visual Range). This is the standard for most major European and US airports: during low visibility conditions, flights continue to operate with less delay in departures. Arriving aircraft continue to operate efficiently and diversions are reduced.

### Optimize Flight Slot Utilization

Slot constraints at China's major airports, including Beijing, Shanghai, and Guangzhou, increasingly hinder growth. Optimizing slot allocation procedures and utilization is necessary to meet the growth and efficiency targets set by the State Council. AmCham China recommends the following steps to further improve air services:

- Continue to improve and optimize slot allocation procedures for both domestic and foreign air carriers and ensure slot utilization is in line with the International Air Transport Association's Worldwide Slot Guidelines.
- Establish a fair and transparent process including measures to ensure the timely re-allocation of unused or under-utilized slots.
- Encourage CAAC to replicate the slot allocation reform from Shanghai Pudong and Guangzhou Baiyun Airports to more airports, and allow "slot swap" between air carriers, instead of only "auction" and "lottery plus paid fee."
- Extend airport operating hours at key airports to increase capacity without the need for additional facilities.
- Ease or eliminate arbitrary limitations on daily operations which do not take into account actual usage, and encourage more use of off-peak hours.
- Ease or eliminate limitations on day-time slots for all-cargo operations, as well as restrictions on co-terminal operations.
- Continue to reduce or eliminate ground delays at major airports. Such delays have a significant impact on down-line connections, impact costs, and inconvenience customers. Lengthy delays also generate more emissions aggravating air pollution.

### Increase Hub Efficiency

AmCham China recommends increasing hub efficiency by allowing baggage checks for transfer passengers in Beijing and Shanghai Pudong. This will generate more jobs and revenue for airports, while also helping to attract more passengers who are transferring to or from other cities in northern Asia. An increase in efficient hub operations and code-share cooperation could result in carrier gains for both the US and China.

Policies should be developed to facilitate timely transfers of cargo and passengers, as well as streamlined baggage handling. This would help China capture a larger share of Pacific Rim air traffic from other regional hubs. More efficient operations would also improve customer experience and open new, secondary markets between the US and China. More than 40 percent of China's second-tier cities are served by third-country carriers which have hubs outside of China. Both Chinese and US airlines are losing business because of this.

There needs to be a continued emphasis on improving the operation of China's international gateway airports to make them more efficient as international and domestic hubs. Development of Beijing, Shanghai, and Guangzhou as recognized hub airports is a high priority for US and Chinese air carriers alike. Airlines have found that the US and China are both losing market share to third-party countries whose airlines attract US-China passengers and cargo, bypassing China's primary international gateways.

### Cargo Industry Issues

The international logistics industry, which depends on well-timed air transportation, plays an increasingly important role as China moves up the value chain in exports. Express deliveries have been affected by a nationwide policy against giving new day-time landing and take-off slots to all-cargo operators at "slot coordinated" airports, as well as the policy against co-terminalization operations between such airports due to restricted airspace and a lack of slots. This has adversely affected the growth of express services that are essential to China's foreign trade, and also affects the country's competitiveness in global supply chains. However, it is understood that CAAC may be considering a relaxation of the "freighter window", in which slots for all-cargo operations are limited to night-time hours at principal Chinese

情况下，操作能力依赖于可支持二类和三类运营（跑道视程能见度为 75 米）的大型机场的仪表着陆系统和陆基增强系统。大多数欧洲和美国的大型机场都满足这个标准：在能见度较低的情况下，航班继续运营，起飞时间延误更少。抵达的飞机继续有效运作，改道情况减少。

### **提高航班时刻利用效率**

中国各大机场的航班时刻申请限制，包括北京、上海和广州，越来越阻碍了经济增长。优化航班时刻分配及利用流程有助于满足国务院的增长和效率目标。商会建议通过以下几步进一步改善航空服务：

- 继续改善和优化国内外航空公司的航班时刻分配程序，确保航班时刻利用符合国际航空运输协会的《全球航班时刻指南》。
- 建立公平和透明的程序，包括采取确保及时重新分配未使用航空时刻的措施。
- 鼓励中国民用航空局将上海浦东机场和广州白云机场的航班时刻分配改革推广到更多机场，允许航空公司的“航时交换”，而非仅仅的“拍卖”和“摇号加付费”。
- 增加主要机场的机场运营时间，无需额外设施即可提高运营能力。
- 减少或消除日常运营中没有考虑到实际使用的专断限制，鼓励利用更多非高峰时间。
- 减少或消除所有货运作业不得在白天运行的时刻限制，以及对双联合终端运营的限制。
- 继续着力于减少大型机场的地面延误。这种延误对下行线路连接、影响成本和客户不变造成重要影响。长时间的延误也会导致更多废气排放，加重空气污染。

### **提高枢纽效率**

商会建议，通过允许北京和上海浦东机场的中转旅客托运行李来提高枢纽效率。这将为机场创造更多就业机会和收入，同时也能吸引更多中转至或来自某些北亚城市的乘客。枢纽运营的效率提高和合作对中美两国的航空公司都有所益处。

应制定推动货运和客运及时换乘的政策，并简化行李处理流程。这将有助于中国在来自其他区域枢纽的环太平洋空中交通流量中获取更大比例。更多高效运营还可以改善客户体验，打开中美新的二级市场。中国 40% 以上的二

线城市都是由拥有其他非中国枢纽的第三国家的航空公司服务，中美两国的航空公司都因此而亏损。

中国应继续致力于中国国际门户机场运营表现的提高，努力将它们打造成为国际和国内的交通枢纽。北京、上海和广州的枢纽机场发展对中国和美国航空公司都十分重要。航空公司发现中美都因为第三方国家而失去了市场份额，这些国家通过中国的主要国际门户来吸引中美旅客和货运。

### **货运行业的问题**

随着中国提高出口价值链，依赖于适时空中交通的国际物流行业发挥了越来越重要的作用。在“航班时刻协调”机场，面向所有货运运营商制定新的白天着陆和起飞时刻的全国政策，以及由于限制空域和时刻缺乏而导致的反联合端运营政策，影响了快递运营。这也不利于对中国外贸至关重要的快递服务的增长，同时也影响了中国在全球供应链的竞争力。然而，据了解，中国民用航空局可能正在考虑放宽“货机窗口”，这一政策规定所有货运运营的时刻受限于中国主要机场的夜间时间。这一问题的改善将将进一步促进市场发展。

联合终端化允许航空公司通过作为连续旅程一部分的相同飞机来在外国服务两处或两处以上的地点。该航空公司不允许在两点之间承运国内交通（即从事沿海运输），但是可以在联合端点化地点或国外之外地点的任一地点提供航空服务。联合端点化允许航空公司，尤其是所有货运运营商，通过与更大、已设的目的地的服务相结合来发展面向更小内陆地点的服务。这可以帮助航空公司最大化飞机使用的效率，显著减少成本，同时减少货主和厂商的市场风险。

### **海关**

商会在 2017 年《白皮书》中表示，过于复杂的海关规定影响了及时运营效率，持续阻碍中国物流业的发展和演变。缺乏在实际航空时间范围内允许货物通过中国的门户机场抵达的切实可行的海关流程，不利于中国中西部地区的国际航空货运增长。受影响的航空公司转向或受限在中国之外的机场枢纽运营，或者完全不服务这些内陆地区。随着航空货运服务的需求增长和网络的日益复杂，对调度灵活性的需求也随之增加。对货运服务的需求不是静态的，而是根据节假日、季节和消费者需求而不断变化。我们需要采取更为灵活和及时的程序，让航空货运承运人根据需求调整其计划安排，从容应对网络中所有的计划冲突。

airports. Progress on this issue would provide welcome relief to the market.

Co-terminalization allows a carrier to serve two or more locations in a foreign country with the same aircraft as part of a continuous journey. The airline is not allowed to carry domestic traffic between these two points (i.e., to engage in cabotage), but is otherwise free to provide air service between each of the co-terminalized points and points outside the foreign country. Co-terminalization allows airlines, especially all-cargo carriers, to develop services to smaller, interior points by combining services with larger, more established destinations. This allows airlines to maximize efficiency in the use of aircraft and significantly reduce costs, while also mitigating market risks for shippers and manufacturers.

### Customs

As discussed in the *2017 White Paper*, overly complex customs regulations affecting the efficiency of timely operations continue to hamper the evolution and growth of the logistics industry in China. The lack of practical customs procedures allowing goods in-bound to flow through China's gateway airports within a realistic aviation time-frame discourages the growth of international air cargo to China's central and western regions. Affected carriers are moving or limiting hub operations to airports outside of China or not serving these internal regions at all. As the need for air cargo services grows and networks become more complex, the need for greater scheduling flexibility also increases. Demand for cargo services is not static, but fluctuates widely in response to holidays, seasons, and consumer demand. More flexible and timely procedures are needed to allow air cargo carriers to adapt their schedules to demand and to recover from schedule disruptions elsewhere in their networks.

### Coordinating Efforts for Service Efficiency and Cost-Effectiveness

The already high costs at major Chinese airports continue to rise, further impeding aviation operations. Aviation fees in China are already among the highest in the region, while local monopolies on the provision of necessary supplies and services, such as fuel, cargo handling, and government filings, are an expensive drag on efficiency. CAAC, airports, border agencies, and airlines must work together to lower costs at China's international airports.

### Enforcement of Dangerous Goods Regulations

AmCham China recommends that the Chinese government impose stricter supervision on manufacturers and/or shippers of dangerous goods (e.g., lithium batteries). Our members strive to meet "China Civil Aviation Dangerous Goods Transportation Administration Regulations" (CCAR 276-R1) compliance requirements but remain concerned that

other parties may not be doing so. Stronger enforcement of China's dangerous goods regulations on other parties such as manufacturers or shippers would be helpful.

### *Actions Needed for General and Business Aviation Industry Development*

Our members welcome China's commitments to the continued development of general aviation.

Recent GA progress has been made, such as the simplification of permitting procedures for general and business aviation operations. AmCham China also applauds the policy guidance and steps issued by the National Development and Reform Commission (NDRC) and State Council to reform the aviation sector further. These measures should be followed diligently as China implements the 13th Five-Year Plan. Our members hope that the challenge of incorporating GA into China's national airspace system will remain a priority. GA growth depends heavily on Chinese government actions to improve physical and policy infrastructure.

AmCham China recommends more efforts be made to realize the following:

- Liberalize airspace at all altitudes to allow for more direct routings and enable GA aircraft to operate at optimum altitudes for greater fuel efficiency.
- Develop GA airports, improve and integrate GA access to commercial airports, and support competition among Fixed Base Operators with standards for fueling and maintenance facilities, and all other functions.
- Differentiate safety regulations based on types of GA as well as for air carriers to accurately match the mitigation of safety risk to the cost of regulation.
- Improve the Flight Service Station system to provide online weather and other flight planning information and filing services.
- Provide air carriers access to domestic aeronautical information, so it can be integrated into the required charts and maps that support flight safety throughout China. The Aeronautical Information Publications for Visual Flight Rules (VFR) must also be more widely available. The safety of such VFR flights depends on the availability of navigational data and charts.

### *Aligning Certification Processes with International Standards*

AmCham China congratulates CAAC on the signing of the FAA-CAAC IPA under the US-China BASA. This new format agreement is a clear indication of the increasing collaboration between FAA and CAAC, efforts to reduce the burden on both regulators and industry, and of growing alignment with international certification practices. Industry manufacturers look forward to IPA implementation that provides a predictable regulatory environment for aviation

### **协调服务效率和成本效益**

中国主要机场本已高昂的成本持续呈现上升势头，进一步阻碍了航空业务的发展。中国的航空费用已经是这一地区最高的了，而当地对燃料、货物装卸和政府文件等必需物资和服务的垄断，更是极大地影响了效率。中国民用航空局、机场、边境机构和航空公司必须携手合作，减少中国的国际机场成本。

### **危险品条例的执行**

商会建议中国对危险品（比如锂电池）的生产商和承运人实行更为严格的监管。商会会员努力满足《中国民用航空危险品运输管理规定》(CCAR 276-R1)的条件，但是仍然担心第三方可能不会严格执行本规定。对生产商和承运人等第三方实行更严格的中国危险品管理条例会有裨益。

### **通用和商业航空业发展所需要采取的行动**

商会会员乐于见中国对持续发展通用航空的承诺。

最近通用航空取得了一些进展，比如简化了通用和公务航空运营的许可程序。商会赞同中国发改委和国务院颁布的关于进一步改革航空业的指南和措施。中国实施“十三五”规划的同时，这些措施也应得到实现。我们的成员希望，将通用航空融入中国全国空域体系的挑战得到重视。通用航空的增长在很大程度上取决于中国政府改善设施和政策基础的行动。

商会建议进一步推动工作，实现以下几点：

- 开放所有高度的空域，允许更为直接的航线，使通航飞行器可以在最佳飞行高度实现更佳的燃油利用效率。
- 发展通用航空机场，完善和整合运输机场对通用航空的准入，支持固定基地运营商通过加油、设施维护及其他服务功能进行竞争。
- 基于通用航空类型和航空运营商的不同，实施不同安全条例，以精确采取安全风险调控措施。
- 完善航空服务站系统，提供在线天气预报等其他飞行计划信息和报文服务。
- 允许通航承运人访问国内航空信息，并将其与所需图表和地图相整合，支持全中国的飞行安全工作。适用“目视飞行规则”的航空信息出版物必须得到更广泛的应

用。这些“目视飞行规则”的飞行安全取决于导航数据和图表的可获取性。

### **审定程序与国际标准接轨**

商会祝贺中国民用航空局与美国联邦航空管理局共同签署《中美双边航空安全协议》下的《适航实施程序》。这一新协议清楚地表明了美国联邦航空管理局和中国民用航空局之间继续加强合作，努力减轻监管机构和行业负担，以及与国际审定惯例日益接轨。工业制造商期待《适航实施程序》实施可以为航空产品和服务提供一个预期管理环境。美国和中国企业界均对《适航实施程序》的实施，以及其对商业的实际应用的影响表示极大关注。商会建议中国民用航空局与美国联邦航空管理局合作，加强对制造商关于《适航实施程序》的进一步解读和阐述。

中国民用航空局近来重组了适航审定部门，此次重组预计将进一步提高效率和改进各方协调的能力。由于航空器适航审定司的组织结构调整对于行业发展的意义重大，ACP 成员公司一直都很关注、并且希望进一步了解组织结构改变将带来的相应变化，以便更好地支持和配合适航审定部门的工作。

商会建议中国民用航空局采取标准流程时间帮助规划，同时也理解到这些流程有时也难以全部完成。ACP 的会员公司使用该套管理模式与其他机构（比如美国联邦航空管理局和欧洲航空安全局）合作时，也借鉴了该管理方法，达到了互惠互利的结果。公司发现这些措施对项目中已建立了流程时间的其他机构也达到了相同的效果。

即便面对繁重的启动和初始工作，适航审定部门的工作仍在有条不紊地进行，商会对此感到钦佩和高兴。商会航空体系快速发展给中国民航局带来了巨大的工作量，产生了更多的监管方面的挑战，而《适航实施程序》有望将长期解决这些问题。

商会还注意到，中国民用航空局最近较为关注飞机交付授权审定检查方面的内容。这样的委任授权对中国民用航空局和各制造商都大有益处。商会成员公司支持中国民用航空局与美国联邦航空管理局、欧洲航空安全局、加拿大交通部、巴西国家民航局等其他航空机构继续开展密切合作，统一审定、验证、检查和制造验收的流程与方式。

products and services. US and Chinese companies already exhibit strong interest in the details of IPA implementation, and the impact that practical application of the IPA will have for business. AmCham recommends that CAAC increase its efforts with FAA to educate manufacturers on IPA.

AmCham China welcomes CAAC's recent reorganization of the Aircraft Airworthiness Department, which is expected to support continuous improvement in CAAC coordination and efficiency. As industry understanding of CAAC organizational structure is also important, our members continue to express interest in obtaining better visibility into CAAC's organizational structure.

We recommend that CAAC adopt standard flow times to help with planning, while also acknowledging that these flows will sometimes not be met. Companies have found such measures to be mutually beneficial in projects with other agencies, such as the FAA and European Aviation Safety Agency (EASA), which have established flow times.

Given the difficulties that certification centers face in starting operations and responding to heavy initial workloads, the CAAC's recent gains are commendable. AmCham recognizes the IPA as a long-term enabler that helps support CAAC's substantial workload as rapid aviation system growth leads to more regulatory challenges.

AmCham also recognizes CAAC's recent interest in delegating certification inspection for aircraft delivery. The mutual benefit of such delegation to both CAAC workload and manufacturers will be significant. AmCham members encourage the CAAC to continue working closely with the FAA, EASA, Transport Canada, the National Civil Aviation Agency of Brazil (ANAC) and other aviation authorities to align practices of certification, validation, inspection, and manufacturing approval.

### ***Recognition and Guidance Needed for CAAC Parts Manufacturing Authorization***

Our members encourage CAAC to continue development of parts manufacturing authorization (PMA) processes to permit foreign suppliers of parts and components for COMAC ARJ-21 and C919 aircraft to sell replacement parts directly to COMAC's airline customers. Without a proper PMA process and guidance in place, parts required to support post-delivery airline operations would need to flow through COMAC, which is impractical and is viewed as a disadvantage by airlines for operating COMAC aircraft types. AmCham China therefore urges CAAC to open its market to allow full acceptance of FAA PMA parts without restriction. This will foster access to a large, experienced and vetted industry base capable of fast turn times and efficient development of complex solutions for ensuring aircraft safety. Additionally, the FAA has tremendous experience (more than 1.3 million approvals) dating back to the 1970s with very few concerns relating to airworthiness occurring in this period.

Initial efforts for CAAC PMA should focus on parts with the lowest risk. The global PMA industry has evolved to produce very complex parts and parts with significant system interactions, including parts that influence boundary conditions for life-limited parts (LLP). AmCham China recognizes that CAAC will need substantial time to build the technical capability to support PMA applications.

We recommend that CAAC ensure that adequate rules and guidance materials are in place to address corollary processes, including Instruction for Continued Airworthiness approvals, analysis of system effects (especially with parts impacting thermally-balanced systems), validation of airworthiness limitations when PMA parts are introduced on parts that influence LLP boundary conditions, establishment of ownership for failure investigations when operating configurations have been modified differently from the type design, and Failure Malfunction and Defect reporting requirements for PMA holders.

It is also essential that PMA rules and guidance materials address assessment of design changes, both intentional and unintentional, that create untested operating configurations at the system level, in order to ensure compliance with all certification requirements.

CAAC should continue to review the recent guidance material issued by the FAA to address turbine engine PMA where the FAA has determined that part-level approval processes are inadequate for assessing system interactions that can be impacted by design changes introduced through PMA.

AmCham China encourages CAAC to work closely with the FAA, EASA, ANAC, and Transport Canada to help their inspectors gain experience in the delivery of aircraft. More broadly, we encourage CAAC to align its practices with other regulatory bodies around the world. US companies are also able to provide expertise and support to CAAC inspectors regarding standardization of their aircraft delivery practice.

## **Recommendations**

### ***For the Chinese Government:***

- **Adopt a national ATFM framework that incorporates a SWIM system and CDM procedures for air traffic control, airline, and airport experts to enable growth and efficiency through enhanced system management that also alleviates delays.**
- **Develop a state-of-the-art aviation weather forecasting system customized to CAAC operations.**
- **Align certification processes with international standards.**
- **Develop a parts manufacturing authorization process.**

## 需要中国民用航空局在零部件制造授权方面给予指导和认可

商会会员支持中国民用航空局继续推动零部件制造授权程序，中国商飞 ARJ-21 和 C919 飞机零部件供应商向中国商飞的航空公司客户直接出售可替换配件。飞机交付后，航线运行所需的零部件必须通过商飞引入，这一过程并不实用，并且航空公司认为这一流程其实是采用商飞飞机机型的一项弱势。商会促请中国民用航空局进一步开放市场，降低限制条件、更多地允许美国联邦航空管理局的零部件制造授权。这将有助于加速经验丰富且符合标准的大型产业基地建设，以加快流转时效和复杂解决方案的进展，进而保证飞机安全性。此外，美国联邦航空管理局的丰富经验可以追溯到 20 世纪 70 年代（超过 130 万个批准），并且这一时期很少出现适航性问题。

中国民用航空局的零部件制造授权工作最开始应着力于风险最低的零部件上。全球零部件授权产业已经发展到非常复杂的零部件和重要交互系统的零部件制造，包括一些特殊部件，这些部件会影响有固定时限部件的边界条件。商会认识到，中国民用航空局将需要花费大量的时间来发展相应的技术，以支持零部件制造授权应用。

商会建议中国民用航空局确保制定适当的规定和章程指南，包括指导持续适航批准的指南、系统影响分析（尤其是影响热平衡系统的零部件）；针对影响有固定时限部件的边界条件的部件的零部件制造授权，采用验证适航限制；当运行配置修改后与设计许可不相符，出现错误调查报告的时候，应建立问责制，以及对零部件制造授权持证者的故障和错误上报应有明确的要求。

零部件制造授权规定和指导内容也必须解决设计变化的评估问题，创建未经测试的系统级操作配置，以确保符合所有审定要求。

中国民用航空局应继续审查美国联邦航空管理局最近为解决涡轮发动机零部件制造授权问题的指导文件，美国联邦航空管理局已确定部件级的审批程序不足以评估那些受到零部件制造授权设计变化影响的系统交互工作。

商会鼓励中国民用航空局与美国联邦航空管理局、欧洲航空安全局、巴西国家民航局，以及加拿大交通部继续开展密切合作，帮助其监察员获取更多的飞机交付经验。更广泛地说，我们鼓励中国民用航空局与全球各地的监管机构的流程相接轨。美国公司愿意向中国民用航空局的监察员提供关于飞机交付工作标准化的专业知识和全力支持。

## 建议

### 对中国政府：

- 启用全国空中交通流量管理框架，包括关于空中交通控制、航空公司和机场专家的全系统信息管理体系和协同决策体系，通过减少延误的强化系统管理来促进增长和提高效率。
- 建立一套适合中国民用航空局业务的航空天气预报系统。
- 将中国认证流程与国际标准接轨。
- 制定零部件制造授权流程。
- 优化中国主要枢纽机场的时刻利用和操作程序，提升调度灵活性。
- 继续推进实体和政策基础设施建设，推动中国全国空域体系的通用航空增长。
- 通过制定全系统应用方案，继续推动提高效率的新一代和单一欧洲天空空中交通管理研究项目和程序的有效利用。
- 规范基于外国的全年分销体系，采用与国有竞争者相同的条款。



- Optimize slot utilization and operational procedures at China's major hub airports and increase scheduling flexibility.
- Continue to strengthen physical and policy infrastructure to enable GA growth within China's national airspace system.
- Continue the effective utilization of efficiency-boosting NextGen and SESAR technologies and procedures by developing plans to encourage their system-wide use.
- Regulate foreign-based GDSs on the same terms as state-owned competitors.



# Cosmetics

## Introduction

Retail sales of cosmetics in 2017 reached RMB 2,514 billion (US \$399 billion), up 13.5 percent year-on-year, the highest increase in the past five years. In 2017, the State Council repeatedly called for an increase in effective supply to meet the new demand, improvements in the consumption environment, and the continuous promotion of supply-side reforms in consumer goods to satisfy increasing demand.

## Recent Developments

In 2017 several favorable policies to the cosmetics industry were introduced. They include the “Decision of the State Administration for Industry and Commerce (SAIC) on Abolishing and Modifying Part of Rules and Regulations” (SAIC Order No. 92), dated October 27, 2017. The order abolished six regulations, including the “Administrative Methods for Cosmetics Advertisements” which had been in effect for 20 years. Currently, “data involving performance or function, sales volume of cosmetics” in advertisements are allowed, as long as the “data used shall be true, accurate and their sources indicated,” as specified in the Advertising Law.

Another favorable measure was approved at the executive meeting of the State Council on September 20, 2017, chaired by Premier Li Keqiang. The meeting was convened to discuss the establishment of a new comprehensive cross-border e-commerce pilot zone, and to extend the transitional cross-border e-commerce retail import policy through the end of 2018. This is the second extension of the policy. Under this measure, cosmetics imported for the first time do not need to be registered or filed.

Moreover, the General Administration of Quality Supervision (AQSIQ) issued the “Notice on Simplifying Inspection and Quarantine Procedures to Improve Customs Clearance Efficiency” (No. 89, 2017) on October 24, 2017. The Notice provided that quality supervision shall be rigorously conducted in order to apply conformity assessment procedures to imports and exports that require inspection based both on risk classification and enterprise credit score. Such

conformity assessment procedures may include any of the following: sampling, inspection (quarantine) and checking; evaluation, validation and qualification guarantee; registration, recognition and approval; and several other alternatives. The Notice took effect on November 1, 2017.

The Ministry of Finance on November 24, 2017 posted an update stating that import tariffs on certain consumer goods would be adjusted. Such goods would include food, health care products, pharmaceuticals, daily necessities, clothing, shoes and hats, household equipment, culture and entertainment, commodities and other types of consumer goods. Import tariffs adopted 187 8-bit tax identification numbers with the average tariff reduced from 17.3 to 7.7 percent as of December 1, 2017.

### *Revision of the “Cosmetics Supervision and Administration Rule”*

“Cosmetics Supervision and Administration Rule” (1989) and its “Rules for the Implementation” (1991) have been in place for nearly 30 years. As this is a specialized rule for legalizing the management of cosmetics, some of its requirements are falling behind the needs of the industry development and regulations. Revision of these rules is consequently needed.

In July 2015, the Legislative Affairs Office of the State Council solicited public comments on the draft of the revised “Cosmetics Supervision and Administration Rule” (the Administration Rule). The draft demonstrates the scientific supervision idea which is “problem-oriented, manages risks, focuses on national conditions, and draws on international experience.” However, there is still room to adjust the specific supervisory requirements for administrative licensing, enterprise responsibility, and the special characteristics of products in the industry, as specified below:

- 1 AmCham China recommends clarifying that the category of new ingredients subject to administrative licensing be limited to preservatives, sunscreens, colorants, hair dyes, and whitening agents. The wording “and other new ingredients with relatively high risks” should be deleted. As for low-risk ingredients that are not within the permitted categories, real notification-based filing management is to be implemented.

# 化妆品

## 引言

2017年，中国化妆品零售额达2514亿元人民币（合399亿美元），同比增加13.5%，这也是过去五年内最高的增长。2017年，国务院多次提出扩大有效供给满足新需求，改善消费环境释放新动能，不断推进消费品供给侧结构改革以满足人民群众日益增长的消费需求。

## 最新进展

2017年有多项影响化妆品行业的利好政策出台，包括：

10月27日，国家工商总局发布《国家工商行政管理总局关于废止和修改部分规章的决定》（国家工商行政管理总局令第92号），废止了包括《化妆品广告管理办法》在内的6部规章。至此，为化妆品广告监管工作服务了二十余年的《化妆品广告管理办法》正式退出历史舞台。目前，对于广告中“涉及化妆品性能或者功能、销量等方面的数据”原则上允许使用，只要满足《广告法》中“使用数据应当真实、准确，并表明出处”等规定。

9月20日，李克强总理主持召开国务院常务会议，会议要求新建跨境电商综合试验区，并将跨境电商零售进口监管过度期政策再延长一年至2018年底。这已是该项政策的第二次延期，在该项措施下，首次进口的化妆品不需进行注册或备案。

10月24日，质检总局发布《关于简化检验检疫程序提高通关效率的公告》（2017年第89号），规定对应实施检验检疫的出入境货物，在实施货物风险分类和企业信用评分的基础上，严格运用合格评定程序进行检验检疫合格评定。合格评定程序包括以下任何一种：抽样、检验（检疫）和检查；评估、验证和合格保证；注册、认可和核准以及其他几项选择。该公告自2017年11月1日起实行。

11月24日，财政部公布消息称，我国将对部分消费品

进口关税进行调整，范围涵盖食品、保健品、药品、日化用品、衣着鞋帽、家用设备、文化娱乐、日杂百货等各类消费品，共涉及187个8位税号，平均税率由17.3%降至7.7%。自2017年12月1日开始实施。

## 条例修订（化妆品监督管理条例）

《化妆品卫生监督条例》（1989年）及其《实施细则》（1991年）已经实施了近30年。由于行业的发展，作为化妆品法制化管理的专门法规，已落后于行业需要，因此，需要修订这些规则。

2015年7月，国务院法制办就《化妆品监督管理条例（修订草案送审稿）》公开征求意见。送审稿体现了“问题导向、风险管理、立足国情、借鉴国际经验”的科学监管理念。中国美国商会（商会）欢迎该理念，但认为在依法设立行政许可、落实企业责任主体原则、立足行业产品特点等方面，具体监管要求仍有调整空间。具体包括：

- ① 商会建议明确将实施行政许可的新原料类别限定在防腐剂和防晒剂、着色剂、染发剂和祛斑剂，删除“以及其他具有较高风险的新原料”。对准用目录类别外的低风险原料实施真正的告知性备案管理。
- ② 商会会员建议采取以下措施：明确特殊化妆品的具体类别和定义，删除允许国务院食品药品监督管理部门调整特殊化妆品范围的有关表述。缩短特殊化妆品技术审评时限，对符合功效成分准用目录的特殊化妆品实施事前备案管理；这也同样适用于对国产进口普通化妆品实施上市前告知性备案管理。明确将脱毛、除臭、防断发化妆品纳入普通化妆品管理，将符合化妆品定义范畴的原育发（防脱）、美乳、健美仍保持特殊化妆品管理。
- ③ 商会建议单独设立口腔清洁护理化妆品类别，实行相应的产品备案制度。保留现有原料、质量和安全功效宣称的相关管理要求。

- ② Our members also recommend the following actions: clarifying the specific category and definition of “functional cosmetics”, removing language that allows the CFDA to adjust the scope of functional cosmetics; shortening the time limit for the technical review of functional cosmetics and implementing the pre-filing management of functional cosmetics that conform to the catalogue of permitted functional ingredients; implementing pre-market entry filing management for domestic and imported non-functional cosmetics; treating hair-removing products, deodorants, and anti-hair breakage products as non-functional cosmetics; and listing hair-growth or anti-hair loss, breast enhancement and fitness products as functional cosmetics as before, or as non-functional cosmetics, provided they fall within the scope of the definition of cosmetics.
- ③ We recommend setting up a standalone category for oral cleaning and oral care products; implementing a product filing system; and preserving the existing management requirements for ingredients and claims about quality, safety, and efficacy.
- ④ Our members also suggest continuing the existing supervision for soap products that are not included in cosmetics management (such as beauty soap, cleaning soap, and antibacterial soap). If the soap is included in the management of cosmetics, we recommended the adoption of a management system similar to that for oral care products. It is also important to clarify that antibacterial soap does not fall within the scope of cosmetics management.
- ⑤ It is recommended that the licensing system for cosmetics production be replaced by a supervisory model that “integrates enterprise information reporting, enforcement of good manufacturing practices (GMPs), and routine flight inspection” for cosmetics manufacturers.
- ⑥ We also encourage regulators to manage labeling and claims of effectiveness in accordance with international best practices, and that they stress enterprises’ responsibility, develop self-discipline in the industry, and provide the field with room for development, while also ensuring product safety and the right of consumers to information.

In short, AmCham China hopes to establish a rigorous, reasonable and effective supervision system to ensure product safety, promote technological innovation, and support the healthy and rapid development of China’s cosmetic industry.

### ***Imported Non-functional Cosmetics Filing Reform Pilot in Pudong***

In March 2017, under a pilot project in the Pudong New Area relating to the separation of business permits and business licenses by the State Council, the imported

non-functional cosmetics management was changed from an examination and approval administration to a filing management system. This reform not only significantly shortened the time of examination and approval for imported non-functional products, but also partly reallocates the workload of review and approval of the China Food and Drug Administration (CFDA). However, owing to the strict restrictions of Pudong pilot on the qualification of enterprises, only a small number of enterprises can file and import non-functional cosmetics through Pudong. Compared with the number of items accepted annually by the State Food and Drug Administration, the number of filed products is not enough to alleviate the pressure on the shortage of reviewing resources in the CFDA. At the same time, due to such lack of resources, delays in processing and the failure to meet completion times have seriously affected the operation and development of cosmetics enterprises. It is therefore urgent that the scope of the pilot for imported non-functional cosmetics management reform be expanded and the filing of imported non-functional cosmetics at provincial level be accelerated.

In September 2017, the State Council issued the “Opinions of State Council on Pushing Forward Business Permit and License Separation Reform Pilot,” which called for replicating the success of Shanghai Pudong New Area to ten free trade zones in China, as well as extension into eligible state level Hi-tech Development Zones, Economic and Technological Development Zones.

AmCham China hopes that local governments, the State Food and Drug Administration and the provincial Food and Drug Administrations can promote the implementation of the State Council requirements to replicate the Pudong pilot reforms. This would ease the pressure on CFDA’s review workload and meet the needs of enterprises to accelerate the import of non-functional cosmetics into the Chinese market, while advancing the development of trade and the economy in general.

Our members also believe that this pilot project can lead to stronger initiatives for promoting fair trade and trade facilitation. Specifically, we suggest that lessons be drawn from the successful experience of domestic non-functional cosmetics filing. For example, safety risk assessment data can be used to replace animal testing in China for non-functional cosmetics imported through Pudong.

Since 2013, the EU has completely banned cosmetic animal testing. However, imported non-functional cosmetics and all functional cosmetics planned for sale in China must still be tested on animals and examined by regulatory authorities. It is only after undergoing this process that the products can enter the market. As a result, many international brands have decided to leave the Chinese market.

In accordance with the “Notice on Matters Related to the Adjustment of Cosmetics Registration and Filing

- ④ 商会会员建议继续监管不纳入化妆品管理的香皂产品（美容皂、清洁皂、抗菌皂等）。如果将香皂纳入化妆品管理，我们建议采用与口腔清洁护理产品类似的管理制度，明确抗菌皂不属于化妆品管理范畴也很重要；
- ⑤ 建议取消化妆品生产许可制度，对化妆品生产企业实施“企业信息报备、强制实施良好生产规范（GMP）与日常飞行检查相结合”的监管模式。
- ⑥ 商会会员鼓励标签与功效宣称管理应充分参考国际惯例，强调企业主体责任；在保证产品安全、满足消费者知情权的基础上给予行业发展空间。

总之，商会促请建立严格、合理、有效的监管体系，既能确保产品安全，又能促进技术创新并支持我国化妆品行业的健康、快速发展。

### 浦东进口非特备案改革试点

2017年3月，在国务院批准的浦东新区“证照分离”改革试点项目中，进口非特殊用途化妆品由审批管理调整为备案管理。这一改革不仅大大缩短了进口非特产品的审查和批准时间；而且，一定程度上减轻了国家食药总局的审评和审批工作量。但是，由于浦东试点对企业资质有严格限制，仅有小部分企业能经浦东备案和进口非特化妆品。备案产品数量与国家食药总局每年受理的事项数量相比实在难以从实质上缓解总局的审评压力。因资源紧缺而导致的化妆品审评延迟，审评无法按时完成等问题已经严重影响了化妆品企业的运营和发展。因此，扩大进口非特管理改革试点范围，加速进口非特备案省级下放迫在眉睫。

2017年9月，国务院发布《国务院关于在更大范围推进“证照分离”改革试点工作的意见》，呼吁将上海浦东新区“证照分离”改革试点的成功案例复制并推广至全国十个自贸区，以及扩展到有条件的国家级高新技术开发区、经济技术开发区等。

商会希望各地政府、国家食药总局及有关省份的省食药局能推进国务院关于复制推广浦东改革试点经验要求的实施。既能缓解食药总局审评工作量的压力，又能满足企业加快进口非特化妆品进入中国市场的需求，促进贸易和经济的发展。

商会会员也认为此项试点工作能够推出力度更大的举措，以促进公平贸易和贸易便利化。具体来讲，我们建议借鉴国产非特殊用途化妆品备案的成功经验。例如，安全

风险评估数据可用于替代从浦东进口的非功能性化妆品在中国实施的动物实验。

欧盟自2013年起全面禁止化妆品动物测试，然而计划在中国上市的进口非特殊用途化妆品和所有特殊用途化妆品必须进行动物试验并经监管部门审核。只有经过这一程序产品才能上市。很多国际品牌受此影响决定放弃中国市场。

根据国家食品药品监督管理总局《关于调整化妆品注册备案管理有关事宜的通告》（国家食品药品监督管理总局，2013年第10号），自2014年6月30日起，国产非特殊用途化妆品实行告知性备案。参照《关于印发化妆品中可能存在的安全性风险物质风险评估指南的通知》（国食药监许（2010）339号）要求进行风险评估。按照这一流程，风险评估结果能够充分确认产品安全性的，可免于产品的相关毒理学试验。这意味着相同的产品仅仅因为原产国的不同而在市场准入环节受到不同待遇。通过浦东试点进口的非特殊用途化妆品自然也不例外。在中国政府着力支持的“法制化、国际化、便利化”的营商环境中、在要素相对自由地流动的市场经济中，对于化妆品这种安全风险相对低的日用消费品，原产国不应成为决定其安全性的因素。监管部门可以通过审核境外生产企业发布的良好生产规范的证明和其它海外生产链相关的手段，进行监管。

有鉴于此，商会呼吁有关部门将浦东进口非特殊用途化妆品试点再向前推进一步，如果风险评估结果能够确认产品安全性，相关毒理学试验应当被豁免。该举措的成功实施很可能将进一步激发市场活力，将更多的创新产品带给中国消费者。

### 行政许可

当前化妆品审评审批流程艰巨，由此导致的产品审评积压问题，给化妆品行业造成了巨大冲击。这种积压的原因，一方面是产品申报数量快速增长。大量申报使得产品注册管理系统，审评程序和有限的行政资源难以应付。

因此，商会建议采取以下措施改革化妆品审批制度：

- ① 尽早完成对上海浦东进口非特化妆品备案试点工作的总结分析，形成可复制可推广的框架，推广到全国范围，减少总局受理的流程数量。
- ② 对经批准的化妆品的管理制度进行合理调整，从到期后再注册变为到期生产企业保证产品安全、合规的管理模式。生产企业负责对法规变化的申请及时作出调整，监管部门应加强后续监督检查。

Management” (CFDA No. 10, 2013), the requirements for domestic non-functional cosmetics were changed to a notification-based filing management system on June 30, 2014. Risk assessment is also conducted in accordance with requirements specified in the “Notice on the Circulation of Possible Safety Risk Assessment Guidelines for Cosmetics Products” (CFDA No. 339 (2010)). Under this process, products whose safety has been confirmed in risk assessments can be exempted from toxicological test requirements. This means the same products are treated differently in market access only because of the differences in the country of origin. The non-functional cosmetics imported through the Pudong pilot are no exception. In a business environment where the Chinese government is making efforts to support an atmosphere of “legalization, internationalization, facilitation,” the country of origin should not be the factor determining the safety of cosmetics, given they are consumer goods with a relatively low safety risk. The regulatory authorities can conduct supervision work by examining certificates of good production standards issued by foreign manufacturers and other methods relating to overseas production chains.

In view of these issues, AmCham China calls on relevant departments to further expand the pilot of imported non-functional cosmetics management in Pudong. Wherever risk assessment results can fully confirm the safety of products, the relevant toxicology test should be waived. Successful implementation of the initiative is very likely to stimulate the market and bring more innovative products to Chinese consumers.

### *Administrative Licensing*

The current cosmetics review and approval process is arduous and has led to a backlog of product reviews. This situation has had a substantial impact on the cosmetics industry. One reason for this backlog is the rapid increase in the number of product declarations. A high number of declarations makes it difficult for the product registration management system, review procedures and limited administrative resources to cope with the demand. AmCham China therefore recommends the following measures to reform the cosmetics review and approval system:

- ❶ Summarize and analyze the import of non-functional cosmetics filing pilot work in Pudong as soon as possible, so as to form a reproducible and scalable framework that can be used nationwide and reduce the number of matters handled by the SAIC.
- ❷ Make reasonable adjustments of the management system of approved cosmetics, changing from registration after expiration to the management mode that production enterprises assure product safety and compliance. Production enterprises should be responsible for initiating changes to applications in a timely manner when regulations change, and regulatory authorities should strengthen subsequent supervision

and inspection.

- ❸ Improve technical review procedures to ensure that the new technical review standards and requirements are implemented after being demonstrated and published; the review of non-security matters is to be completed by the reviewers of National Traditional Chinese Medicines Protection Evaluation Committee.
- ❹ Increase the number of reviewers and strengthen capacity-building. Promote the review mechanism reform of moving from external audit to internal audit. In the transitional phase, explore ways to streamline the review process by considering submitting items with a lower security risk to reviewers of National Traditional Chinese Medicines Protection Evaluation Committee for completion before gradually launching all items.
- ❺ Develop “Management Method on Registration and Filing of Cosmetics” as soon as possible. Study the recent development features of the cosmetics industry, analyze the regulatory priorities in the review and approval of cosmetics, standardize assessment criteria, incorporate specific review requirements into departmental regulations, and ensure compliance with laws and regulations governing the review and approval of cosmetics.

### *Market Regulation*

The CFDA in 2017 further strengthened market supervision of cosmetics, including risk monitoring, national sampling inspection and adverse reaction monitoring, which are important measures to protect consumer rights and interests. However, after the “Streamline Administration and Delegate Power” reform was introduced, many local market supervision departments (including local FDAs) assumed responsibility for the supervision of cosmetics without fully understanding regulatory changes, especially regarding implementation of the “Safety Technical Standard for Cosmetics.” Inconsistent enforcement has led to inconsistency in detection methods, detection baselines, test results, product authentication, law enforcement and penalties, as well as public survey results. Moreover, owing to inadequate understanding of the regulations among some small and medium-sized enterprises, misunderstandings have also occurred among local drug supervision personnel. AmCham China therefore recommends that CFDA strengthen training of local supervisory personnel to raise the quality of supervision and give enterprises opportunities to confirm the accuracy of information before disclosure. Our members are willing to contribute their knowledge to the training of officials and improvement of methods for supervision personnel and small and medium-sized enterprises through the resources on cosmetic regulations available in AmCham China’s Cosmetics and Nutrition Forum.

- ③ 商会建议完善技术审评程序，确保新技术审评标准和要求经过论证、公布后再实施；与安全无关的审评事项，交由国家中药品种保护审评委员会（以下简称“中保委”）的审评人员完成。
- ④ 合理增加审评人员数量，加强能力建设。推进外审转内审审评机制改革。在过渡阶段，探索简化审评流程，考虑先将安全风险较低的事项交由中保委完成，再逐步展开至所有事项。
- ⑤ 尽快研究制定《化妆品注册与备案管理办法》。研究化妆品行业的最近的发展特点、分析化妆品审评审批中的监管重点、规范评审标准，将具体审评要求纳入部门规章，确保化妆品审评审批工作的合规性。

## 市场监管

2017年国家食药总局进一步加强了化妆品的市场监管，包括风险监测、国家抽检、不良反应监测等，这是保护消费者权益的重要措施。但是简政放权后许多地方市场监管部门（含当地食药监）在承担对化妆品的监管责任时，对法规变化尤其是新版《化妆品安全技术规范》的实施缺乏了解，执法水平参差不齐，在检测方法、检测基线、检测结果、产品真伪、执法处罚、公开调查结果等方面出现了偏差。此外由于一些中小企业对法规的理解不到位，在同地方药监监管人员沟通中亦出现矛盾。商会建议国家食药总局加强对地方监管人员的培训，提高监管质量，在信息公开前给予企业确认信息准确性的机会。商会会员愿意利用商会的化妆品和营养论坛中的化妆品法规知识大讲堂项目的资源为监管人员和中小企业的法规知识的培训与提高贡献力量。

## 跨境电子商务

目前，跨境电商已经成为我国实践国际贸易自由化，推动“一带一路”建设的关键领域。2017年9月，国务院决定将跨境电商监管过渡期政策再延长一年至2018年底。2017年11月的《电子商务法（二次审议稿）》再次明确了促进跨境电商的国策。

近年国家在加快完善相关制度并推动试验区的建设，但是商会会员认为目前跨境电商的发展受限于其经营范围的《跨境电子商务零售进口商品清单》，这种正面清单不利于国际贸易自由化、便利化或业态创新，商会建议建立新的清单，或者至少建立和公布目前正面清单的进入机制。

鉴于化妆品安全风险较低的国际监管共识，我们也建议减少准入要求，采取创新监管手段。

## 建议

### 对中国政府：

- 在广泛听取各方意见的基础上，尽快出台《化妆品监督管理条例》。
- 对于进口非特殊用途化妆品备案试点，一方面希望在浦东试点区的基础上，尽快在国务院批准的另外十个自贸区开展进口非特备案；另一方面，商会希望能进一步推进浦东改革试点，允许进口非特备案采用安全风险评估代替动物试验数据。
- 加快化妆品审评审批速度，合理调整已批准产品管理制度，统一、公开审评标准，完善审评程序。
- 建立信息公开的法定程序，加强对地方监督执法人员的培训，保护企业的合法权益。
- 针对跨境电子商务，采用负面清单取代现行的正面清单，大量减少化妆品准入要求。



### *Cross-border E-commerce*

Cross-border e-commerce has become a key area for China's aims regarding international trade liberalization and the Belt and Road initiative. In September 2017, the State Council decided to extend the transitional period for the cross-border e-commerce supervision policy for one more year through 2018. Later in November 2017, the Electronic Commerce Law (second review draft) clarified the national policy for promoting cross-border e-commerce.

China has recently accelerated the improvement of relevant systems and the construction of pilot zones. However, our members believe that the development of cross-border e-commerce is impeded by the "Cross-border E-Commerce Retail Imports List," which restricts the scope of business. Such a list is not conducive to international trade liberalization and facilitation or business innovation. AmCham China proposes the creation of a new list or, at a minimum, that an official list entry mechanism be established and published.

In view of the international supervision consensus on the low safety risk of cosmetics, we also suggest reducing access requirements and adoption innovative means for supervision.

#### Recommendations

##### *For the Chinese Government:*

- **Promulgate the "Cosmetics Supervision and Administration Rule" after soliciting the opinions of all relevant stakeholders.**
- Create a filing pilot for imported non-functional cosmetics. We hope that the filing of imported non-functional cosmetics will be launched in the other 10 free trade zones approved by the State Council on the basis of the Pudong pilot zone. In addition, AmCham China hopes to further promote Pudong's reform pilot program and allow the filing of imported non-functional cosmetics to adopt safety risk assessments instead of data collected through vivisection.
- Speed up the cosmetics review examination and approval, make reasonable adjustments to the approved product management system, unify and open review criteria, and improve the review process.
- Establish a legal procedure for the publication of information and strengthen training of local supervisory authorities to protect the legitimate rights and interests of enterprises.
- For cross-border e-commerce, adopt an alternative list to replace the existing list and make a substantial reduction in the requirements for inclusion of cosmetics.



# Direct Sales

## Introduction

The direct sales industry was first introduced to the Chinese market in the early 1990s, before rapidly expanding across the country. According to statistics from the State Administration for Industry and Commerce (SAIC), there were 163 direct sales companies in China by the end of December 1995. Since its establishment, however, the direct sales industry has been conflated with so-called pyramid schemes. Despite the Chinese government's commitment to eradicating such schemes, they remain as a widespread problem. One reason they persist is that pyramid schemes often disguise themselves as legitimate direct sales businesses to confuse market and regulatory authorities.

To tackle the spread of pyramid schemes, the government has often imposed strict regulations that adversely affect the direct sales industry. For example, the entire direct sales industry was banned from 1998 until the promulgation of the "Regulation on Direct Sales Administration" (Direct Sales Regulation) in 2005, but has grown steadily since then. According to the Ministry of Commerce (MOFCOM), as of December 2017, 89 direct sales enterprises have been approved in China. In 2016, the 80 licensed direct sales companies generated RMB 205.841 billion in sales that year, up 5.2% from RMB 195.585 billion in 2015.

The direct sales industry plays a positive role in promoting employment, consumption, investment, supply chains, tax revenue, public service activities, and small and micro businesses. In particular, given the consumption focus of the Chinese economy, the direct sales industry can play a larger role in fostering consumption and providing flexible employment. Actively promoting the direct sales industry can also help China reach its 13th Five-Year Plan goal of improving living standards. In retrospect, the Direct Sales Regulation defined a legal framework and industry rules which have significantly contributed to the development of the direct sales industry in China.

In the past few years, the Chinese government has streamlined administration and devolved powers to remove unnecessary government regulation and revitalize the market economy. However, concepts and specific provisions contained in the Direct Sales Regulation and related regula-

tions released over 11 years ago are no longer consistent with the current market. This inhibits the ability of the direct sales industry to compete with other sales industries. Moreover, with the rapid development of direct sales and disaggregated business models, as well as a mature consumer mentality in China, current regulations on direct sales are not in line with reality. These factors restrict the development of the direct sales industry, making it difficult to realize the industry's social value, including its ability to promote flexible employment and consumption.

AmCham China appreciates the efforts of the Chinese government to liberalize and regulate the direct sales industry, as well as the positive role that regulations on direct sales have played in the past. However, the concepts in these regulations are inconsistent with current policies and goals of the Chinese government. As a result, the direct sales industry is unable to compete fairly with other sectors, enjoy healthy development, or contribute to society in the manner of other industries.

## Ongoing Regulatory Issues

### *Excessive Constraints on the Direct Sales Industry Limiting Competitiveness*

Since the Chinese government began to improve administration and remove unnecessary government regulations, some sectors have seen active innovation, integration, and rapid growth. Emerging business models enjoy a greater degree of autonomy, such as online marketing, WeChat stores, and the sharing economy. In comparison, the Direct Sales Regulation, which has been in force for over 11 years, imposes strict restrictions on various aspects of direct sales, such as products, remuneration methods, recruitment, training of direct sellers, conferences and other daily operations by enterprises. With so many restrictions, it is impossible for the direct sales industry to compete fairly with conventional retailers, especially e-commerce and WeChat stores.

### *Compensation Restrictions*

The Direct Sales Regulation restricts the type and amount of compensation that direct sales agents can receive and limits commissions for sales agents to not more than 30

# 直销

## 引言

20世纪90年代初直销进入中国，并在短时间内即获得迅猛的发展。据国家工商行政管理总局（现已划归为国家市场监督管理总局）统计，截至1995年12月底，中国已有163家直销公司。直销行业自进入中国以来一直和传销混为一谈。尽管政府不断致力于消灭传销，但传销仍猖獗发展。他们经常谎称自己是直销，混淆市场和监管机构视听。

政府采取严格监管的方式来遏制传销的蔓延，也影响了直销行业的发展。从1998年开始，中国经历了为期7年的全面禁止直销的阶段。2005年颁布了《直销管理条例》以后，直销行业即进入了稳健发展的新时期。截至2017年12月，商务部网站公示全国共有89家企业通过审批获得直销经营许可。2016年内公示的80家获得经营许可的直销企业，在2016年度共创造2058.41亿元业绩，相比2015年的1955.85亿元，增长约5.2%。

直销行业对于促进就业、驱动消费、拉动投资、拉动供应链、增加税收、带动公益事业以及孵化小微企业等方面，都表现出了十分积极的影响。特别是在当前中国经济步入新常态的局面下，直销行业推动消费和促进灵活就业的优势能够发挥更为显著的作用。积极促进直销行业有序发展，有助于加快实现中国第十三个五年规划，提高中国人民的生活水平。回顾历史，《直销管理条例》的颁布提供了法律框架，明确了行业规则，为中国直销行业的健康发展起到了重要推动作用。

近年来，中国政府大力推进简政放权，致力于减少不必要的政府管制，大大增加了市场经济的活力。而已经颁布超过11年的《直销管理条例》及其相关规定，贯彻的管理思路和包含的具体规定，与当前中国政府倡导的整体市场监管导向已经严重不符，抑制了直销行业与其他行业竞争的能力。与此同时，在中国直销行业高速发展、中国商业模式高速发展和消费者心态日益成熟的现实条件下，现行直销法规也与现实时代发展远远脱节。这些因素使得直

销行业发展受到局限，其促进灵活就业、推动消费等社会价值难以充分发挥。

中国美国商会（商会）赞赏中国政府在过往对直销行业开放和规范管理所做出的努力，认可现有直销法规在之前历史时期所发挥的积极作用。但现有法规的理念与当今中国政府倡导的政策和立场不符，造成直销行业无法在市场上与其他行业公平竞争，阻碍了直销行业健康发展，难以发挥出正常的行业贡献。

## 现存监管问题

### 直销行业受到过多束缚，无法与其他行业公平竞争

近年来，中国政府大力推进简政放权，致力于减少不必要的政府管制，大大增加了市场经济的活力。很多原来受到严格管控的行业都借助宽松的政策环境，积极进行模式创新和融合，得以迅速发展。对于网络销售、微商、共享经济等新兴商业模式，政府更是给予了很大的自主空间。而已经颁布超过12年的《直销管理条例》，却对直销经营的各个方面，如产品、计酬方法、人员招募及对直销员的培训、会议等企业日常经营行为均制定了严格的限制条款，这使得直销行业在市场竞争中被死死地束缚住手脚，根本无法与传统零售，尤其是电商、微商展开公平竞争。

### 计酬限制

《直销管理条例》对于直销员可以获得的报酬类型及数额加以限制，规定直销员报酬总额不得超过其所售产品收入的30%，《禁止传销条例》规定基于新招募直销员销售业绩（常称为“团队计酬”）的计酬方式，属于传销的特征。这两种限制违背了以市场为基础的经济实践。以市场为基础的计酬方式和多层次计酬方式是其他行业的普遍做法，因此以上两项规定是对直销行业的歧视和不平等待遇，商会建议废除上述限制。

percent of personal sales. In addition, the “Regulation on the Prohibition of Pyramid Selling” stipulates that compensation based on the total volume of a sales team (commonly called “team commission”) is a characteristic of pyramid selling and is therefore prohibited. These two restrictions run counter to market-based economic practices and are discriminatory and unfair to the direct sales industry, as market-based compensation and multi-level calculation are common practices in other industries. AmCham China recommends that these restrictions be lifted.

In November 2013, the Supreme People’s Court, the Supreme People’s Procuratorate, and the Ministry of Public Security jointly issued the “Opinions on Issues Relating to the Application of Laws in the Handling of the Crime of Organizing and Leading Pyramid Schemes,” a judicial interpretation which, for the first time, provided that “pyramid selling activities based on the sale of goods and for which sales performance is the basis for ‘team commission’ will not be treated as criminal” and provided a judicial distinction between “multi-level selling” and “pyramid schemes.” Current regulations need to be aligned with this judicial interpretation.

#### Restrictions on the Scope of Direct Sales Products and Original Equipment Manufacturer Products

Aside from a few special categories expressly prohibited by law, conventional stores and online channels have the discretion to choose the kinds of products to sell based on market demand. They also have the choice whether to sell their own products, products manufactured by other entities on their behalf, and/or products manufactured by other entities. However, direct sales is confined to six categories of products: cosmetics; cleaning supplies; health foods; health care devices; small kitchenware; and household appliances. Moreover, a direct sales enterprise can only sell its own products (including those of its parent or holding company). In a changing and hotly competitive market, such restrictions constrain the direct sales industry and put it at a disadvantage in market-based competition. Nevertheless, given highly integrated supply chains, the prevalence of original equipment manufacturer products, and manufacturing industry overcapacity in China, preventing the direct sales industry from making use of other sources is contrary to the Chinese government’s efforts to cut excess capacity and enhance efficiency.

In order to reduce costs for real economy enterprises and to foster the innovative transformation of physical retail, the central government issued two documents in 2016: the “Notice of the State Council on Issuing the Work Plan for Reducing the Cost of Real Economy Enterprises” (Guofa (2016) No. 48) and the “Opinions of the General Office of the State Council on Promoting the Innovative Transformation of Physical Retail” (Guobanfa (2016) No. 78). These documents outline measures to reduce institutional transaction market orientation, and to deepen

administrative, regulatory, and service-oriented reform in order to create a better business environment. The transformation of physical retail depends on the market’s ability to remove institutional constraints, create a fair competitive environment, energize market participants, and encourage physical retail enterprises to choose their own path of market adaptation. We believe that the current regulatory and administrative system for the direct sales industry requires urgent reform in line with the aforementioned central-level documents.

#### **Existing Regulations are Inconsistent with Industry and Social Development**

When the Direct Sales Regulation was issued more than 11 years ago, it had a positive effect as it was in line with social needs at that time and was enforced effectively. The Regulation resulted in continuing increases in the total business volume of the direct sales industry, better regulated direct sales enterprises, and improved public knowledge and recognition of direct sales.

However, since the Direct Sales Regulation was issued in 2005, fundamental changes have occurred with respect to the direct sales industry, the maturity of consumers, and the overall Chinese economy. Now with the prevalence of e-commerce, WeChat stores, and the sharing economy, the direct sales industry is closer to the traditional real economy and is a common and productive marketing approach. Today, consumers are familiar with various business models and the capacity for risk prevention has increased. Moreover, regulations on consumer protection and commercial distribution have also improved. Existing regulations on direct sales are no longer consistent with industry and social development, and have become an institutional factor hindering the normal growth of the direct sales industry.

Direct sales enterprises are, for example, still required to establish a service center in each city where their products are sold to provide consultation and services for consumers. Such requirement used to ensure that after-sales service was available to consumers at a time when online sales were not yet common. However, given the prevalence of online virtual trading via e-commerce or social media platforms, in addition to highly developed online or telephone customer service, such requirement is no longer needed. This outdated regulation overburdens enterprises and results in a significant waste of social resources. Similarly, current regulations on direct sales have imposed strict restrictions on various operational details that should be decided by enterprises themselves, including recruitment, compensation, training, and management.

2013年11月，最高人民法院、最高人民检察院、公安部联合印发《关于办理组织领导传销活动刑事案件适用法律若干问题的意见》，该司法解释首次明确规定“以销售商品为目的、以销售业绩为计酬依据的单纯的‘团队计酬’式传销活动，不作为犯罪处理”，更是在司法领域将“多层次销售”和“传销”进行了区分。现行法规应与该司法解释协调一致。

### **直销产品范围和委托加工产品限制**

无论是传统店铺销售，还是线上销售渠道，除了极少数法律明文禁止的特殊品类外，完全可以根据市场需求自主决定其经营的产品品类，既可以销售自己生产的产品，也可以销售委托加工或者其他主体生产的产品。而直销行业，却将可以销售的产品局限于化妆品、保洁用品、保健食品、保健器材、小型厨具、家用电器六个品类的产品。同时，进一步限制直销企业只能销售企业自己生产的产品（包括母公司或控股公司）。在当前市场热点快速切换、竞争激烈的时代背景下，这样的规定大大束缚了直销企业的手脚，使直销行业在以市场为基础的竞争中处于非常不利的局面。然而，在供应链高度整合、委托加工普遍开展和中国制造业产能过剩的背景下，不允许直销企业充分利用社会现有产能，也与中国政府大力去产能、提升效能的做法背道而驰。

中央政府在2016年出台了两个文件（《国务院关于印发降低实体经济企业成本工作方案的通知国发（2016）48号》、《国务院办公厅关于推动实体零售创新转型的意见国办发（2016）78号》），旨在降低实体经济企业成本和推动实体零售转型升级。有关文件中提出着力降低制度性交易成本；深化“放管服”改革，为企业创造更好的营商环境；坚持市场主导。市场是实体零售转型的决定因素，要破除体制机制束缚，营造公平竞争环境，激发市场主体活力，推动实体零售企业自主选择转型路径。我们认为，直销行业的现有法规和管理体制，亟待按照中央上述文件的有关精神进行必要的改变。

### **直销现有法规与现实行业、社会的发展脱节**

《直销管理条例》已颁布超过11年。由于符合当时的社会需求，以及监管单位的有效执法，条例实施以来产生了非常积极的影响：直销行业销售总额不断提升、直销企业运作越来越规范、公众对直销的认知和认同度明显提升。

但是，自2005年《直销管理条例》颁布以来，当今的

中国直销行业发展现状、消费者和中国整体市场经济的成熟程度已经发生了根本性的变化。

如今，在各种电商、微商、共享经济逐步普及的情况下，直销行业更接近于传统的实体经济，是一种常见的、富有成效的营销模式。今天的消费者对于形形色色的商业模式耳熟能详，其风险防范能力也足够成熟。同时，有关消费者权益保护、商业流通的一般性法规逐步完善，在所有这些条件下，现有直销立法与行业、社会的发展脱节严重，已经成为束缚直销行业正常发展的制度性因素。

举例而言，直销法规仍然要求直销企业在开展经营的都市中的每一个城区设立固定的服务网点，承担消费者咨询和服务的职能，这在立法初期“线上销售”业态还不常见的情况下，有着保障消费者获得售后服务的现实意义。但是在今天电商、微商等线上虚拟交易平台大行其道，电话、网络、微信客服技术高度发达的情况下，这样的规定完全丧失现实意义，不仅大大加重企业负担，也造成社会资源的严重浪费。与服务网点的规定类似，现有直销法规对于本来应该属于直销企业自己决定的诸多经营环节，如招募、计酬、培训、管理等等，都规定了严格限制。

## **建议**

### **对商务部、国家市场监督管理总局、国务院：**

- 尽快修订《直销管理条例》，放宽直销员计酬限制，允许以直销员下属销售团队的销售总量为依据计酬，但不能以招募的人员数量为依据计酬。
- 尽快修订《直销管理条例》配套规定，给直销行业松绑，如：
  - ◆ 放宽产品范围，允许委托加工产品作为直销产品。
  - ◆ 放宽直销员培训管制。
  - ◆ 取消或放松服务网点方面的要求。
  - ◆ 减少对直销员培训及会议等企业日常经营行为的限制。

## Recommendations

### *For MOFCOM, SAIC, and the State Council:*

- **Revise the Direct Sales Regulation as soon as possible, by relaxing restrictions on compensation for direct sales agents and allowing compensation to be based on the aggregate volume of the sales team under a direct sales agent, provided it is based on sales volume and not on the number of sales agents recruited.**
- **Revise regulations related to the Direct Sales Regulation as soon as possible to lift restrictions on the direct sales industry, including the following:**
  - ◆ **Easing product category restrictions and allowing the sale of OEM products as direct sales products.**
  - ◆ **Lessening restrictions on direct sales agent training.**
  - ◆ **Removing or relaxing service center requirements.**
  - ◆ **Reduce restrictions on direct sales agent training and other daily operations by enterprises.**





# Express Delivery Services

## Introduction

Government agencies in recent years have closely monitored the development of safety standards in the field of express delivery services (EDS) and have implemented nationwide measures to improve safety in the industry. In 2015, for example, 13 ministries and commissions jointly issued new initiatives to strengthen security inspections for logistics and EDS channels. Similarly, they implemented the so-called “Three 100 percent” security measures (100 percent visual inspection, real-name registration, and x-ray screening) for EDS channels across the country. Such nationwide measures have been integrated into existing procedures.

AmCham China understands that enterprises have the obligation and responsibility to cooperate with regulatory bodies in strengthening security, and we believe that policies should be reasonable and fully in line with industry-specific conditions. In this way, regulatory bodies can avoid overly broad measures that may impede normal business operations and create unnecessarily high operating costs and compliance obligations for EDS firms. Currently there is no national coordination mechanism, which has led to varying interpretations of policies by different government departments in data collection and management, real-name collection, and other fields. Departments in different regions act separately and fail to undertake uniform coordination, meaning that enterprises have to deal with a variety of inspection and safety requirements. Such stipulations not only increase costs and severely undermine operational efficiency, but also run contrary to State Council directives to streamline administration and reduce enterprises’ administrative burdens.

In addition, given the new series of technical specifications and standards such as the “Cybersecurity Law” and supporting outbound data safety assessment, the express delivery industry will face more challenges in data monitoring and cross-border data transfer in the future. International express delivery services are of vital importance to global trade, as well as for commercial customers with an international footprint. As such, AmCham China urges that any decision that may impact the construction of data management and evaluation systems, or inhibit enterprises’ daily operations, take into account the opinions of industry.

Relevant regulatory authorities are urged to consider the connection between regulation and industry development in a more balanced manner. In this way, authorities can maintain effective regulation, while supporting and promoting healthy and stable industry development, and also facilitate compliance by industry to ensure robust security in the EDS industry.

## Ongoing Regulatory Issues

### *Safety Supervision*

AmCham China members note that various regulatory requirements impact their day-to-day operations. Impacts are most apparent in the following areas.

### *Data Collection and Monitoring*

Regional authorities have imposed reporting requirements on companies in the EDS industry regarding the receipt of goods. These include requiring companies to submit data reports to local regulatory authorities and connect their information to data platforms developed by local management departments. Failure to do so entails enforcement penalties.

Given widespread concerns about global security in multinational corporations (MNCs), many of our members have adopted strict and globally consistent procedures and rules for internal data management. These rules stipulate that regional headquarters offices are required to build, manage, and monitor internal data systems and connect them to global data networks for consistent supervision. Requiring an MNC to submit highly confidential internal data to a local platform developed and managed by a third party goes against internationally accepted practices. It could also expose sensitive data to security risks or cause the MNC to incur legal liability or other unforeseen losses. If other local governments begin to make similar requests of MNCs, individual firms may be left with little or no control over their own data security management.

In 2014, the State Council released the “Several Opinions on Promoting Fair Market Competition and Maintaining Normal Market Order” (Guofa (2014) No. 20) to:

# 快递服务

## 引言

**近**年来快递领域安全监管一直处于相关政府重点监控范围，针对快递行业的安全监管举措在全国范围也不断加强。例如，自2015年开始启动的13个部委联合针对物流快递渠道安全检查行动，同时还在全国物流快递渠道实施了“三个百分百”的快递安全措施（100%收寄验视、100%实名收寄、100%过机安检）。这些安全措施都已经纳入到现存的程序中。

中国美国商会（商会）理解企业有责任和义务配合监管部门加强安全，同时也认为相关政策应充分合理地考虑行业特点和情况，本着科学性合理性的原则，避免一些过度监管措施严重妨碍企业正常业务，额外增加企业负担和运营成本。目前国家层面缺乏统一协调机制，在数据收集管理、实名收寄等领域造成各方对于政策不同解读，各地方各部门分头行动，缺乏统一协调，企业不得不频繁应付各种检查和安全要求。这种规定既增加了企业成本，又严重降低了运营效率，这也与国务院关于简政放权、为企业减负的政策要求相违背。

另外，鉴于《网络安全法》以及配套的数据出境安全评估等一系列新技术规范和标准地陆续出台，今后快递行业在数据监管和出境安全评估方面必将面临更多的挑战。国际快递业务对于全球贸易和商业客户至关重要。商会促请相关部门在做出任何影响数据管理和评估体系以及可能影响企业日常业务的决定时，能够充分考虑快递行业的特点。

商会期待相关监管部门在以上政策的制定过程中，能够采取更为平衡的方式审视监管与行业发展之间的关系。通过这种方式，相关部门既能实现有效监管，又能支持和促进行业健康稳定发展，同时还能合规守法企业提供更多的便利，保证快递行业的安全性。

## 现存监管问题

### 安全监管问题

商会企业反映各种监管要求对日常业务造成了影响，主要体现在以下方面：

### 数据收集和监管

目前企业仍然面临在各地接到要求企业在地方进行货物收据报送的要求，包括报送数据给当地监管机构，要求企业要实现与地方管理部门开发的信息数据平台连通，如果不能按时配合，将根据相关法规对企业进行处罚。

在跨国企业对全球安全形势普遍担忧的大背景下，商会企业建立了全球统一的严格内部数据管理流程和制度以要求各地办公室和总部创建、管理和监控内部数据系统并与全球数据网络对接，实现全球统一监管。将高度机密的内部数据传输给由地方第三方开发管理的平台，对于国际企业来说违背全球统一的安管理规定，也存在极大的安全隐患和风险，带来的损失和相关法律责任很难估量。如果其他城市纷纷提出类似要求，将给企业的数据安全带来失控的危险。

2014年国务院发布的《关于促进市场公平竞争维护市场秩序的若干意见》国发(2014)20号中早就明确提出：

“规范和完善监管执法协作配合机制，完善市场监管部门间各司其职、各负其责、相互配合、齐抓共管的工作机制。制定部门间监管执法信息共享标准，打破信息孤岛，实现信息资源开放共享、互联互通。”

商会企业早已按照要求每天向国家邮政局的内部信息系统提交相关数据，国家局已经开发了内部信息管理系统，在国家层面也成立了寄递渠道安全管理小组，商会期待能够尽快加快快递行业统一数据管理平台建设，实现数据资源共享的能力，提高监管效率，降低企业负担。

“standardize and improve mechanisms for regulatory enforcement coordination and cooperation and improve the mechanisms for market regulation authorities to perform their respective duties and responsibilities and work together. Formulate standards for inter-departmental regulatory enforcement information sharing, break up ‘information islands’ and achieve the openness, sharing, and exchange of information resources.”

Our members have reported relevant data to the State Post Bureau (SPB) information system on a daily basis. At the national level, the Post and Delivery Security Administration Group was also established. AmCham China looks forward to the swift creation of a unified data management platform for the EDS industry as soon as possible to enhance data resource sharing capabilities, improve regulatory efficiency, and reduce the burden on enterprises.

### Express Delivery Name Verification System

The Post Regulatory Department has developed an APP that verifies the names of senders and recipients and which is currently being promoted throughout China. The name verification policy is intended to strengthen the monitoring of high-risk individual customers paying by cash. However, in the process of implementation, various regions have required long-term contract customers to also provide proof of identity, placing a heavy and unnecessary burden on enterprises and commercial clients. Commercial customers and express delivery companies have already signed long-term security guarantee agreements. Requiring name verification for contracted senders of bulk goods, namely identical goods shipped in multiple batches, is unnecessary as they pose risks different than those posed by transactions with individual customers. AmCham China urges the Chinese government to take into account this distinction when making policies for the industry.

### *Cybersecurity*

Several technical regulations and standards have been issued under the Cybersecurity Law, including the “Assessment Measures on the Security of Personal Information and Important Data and the Guidelines for the Safety of Outbound Data”. The EDS industry is explicitly included among the key industries requiring additional assessments and have received specific requirements for security reviews.

The express delivery industry relies on using a substantial amount of customer information and plays an important role in supporting international trade. As such, it possesses characteristics unlike other industries and has distinct requirements for data security. Currently, according to national law, enterprises must submit their data on a daily basis to the General Administration of Customs (GAC) and the SPB. While the new regulatory requirements stipulate that enterprises and related departments must assess these data, there

are still no clear guidelines outlining how these assessment measures should be implemented. If the relevant assessment has an impact on the business of enterprises, especially on the speed of customs clearance, this will impose a significant negative impact on the entire industry. AmCham China hopes that relevant government departments can meet with industry professionals as soon as possible to discuss the issue of data security in the express delivery industry. We urge government officials to incorporate feedback from industry in future regulations.

### *Express Delivery End Recipient*

Identification of end outlets for express delivery has been a difficult task in the industry. Recently, there has been a push for reform measures to replace industrial and commercial registration with end-point filing in order to reduce the burden on enterprises. In researching related policies, AmCham China also urges that relevant departments conduct research on international express delivery business to understand the factors distinguishing international and domestic services. In particular, the government should consider treating small operational sites of international enterprises in urban areas as end outlets which are not required to register.

## Recommendations

### *For the Chinese Government:*

- Establish a uniform security regulation framework at the national level for the express delivery industry, clarify regulatory bodies, and standardize regulatory measures across the country.
- Establish a platform based on the SPB’s existing information system in order to share data between regulatory bodies, thereby reducing the need for duplicative data requests.
- Network security authorities and express regulatory departments should jointly study and formulate a reasonable assessment system for express industry data security
- Consider the features of international express delivery enterprises’ service sites in the construction of express end outlets and include them in the scope of reform.

## 快递实名制

邮政监管部门已经开发了快递实名收寄 APP，并在全中国推广。政策本意是加强对于高风险的现金个人客户的监控。但在推行过程中，各地纷纷要求企业长期签约的合约客户也提供实名登记信息，给企业和商业客户造成很大不必要的负担。商业客户本身和快递企业就签署了长期安全保障协议，大宗货物多批次、同类型的运输，其风险管理与个人客户完全不同，要求签约客户也要每次进行实名验证和收寄是不科学也没有必要的。商会期待在相关政策制定过程中能考虑到快递行业的特殊性。

## 网络安全

自《网络安全法》颁布后，包括《个人信息和重要数据出境安全评估办法》、《数据出境安全评估指南》等技术规范和标准正陆续出台。其中快递行业已经被明确列入了重点评估范围，并提出了安全评估的具体要求。

由于快递行业涉及大量客户信息并发挥着支撑国际贸易的重要作用，在数据安全方面具备与其他行业不同的特点。企业目前每天按照国家的法律要求，都要向海关总署、国家邮政局传送数据，接受监管。按照新的法规要求，这些数据都需要企业和相关部门进行评估，但是目前对于如何实施这些评估措施还没有清晰的指导意见。如果相关评估对于企业业务、特别是通关速度造成影响，必将对整个行业造成重大负面影响。商会期待相关部门能尽快就快递行业数据安全与行业专家进行沟通和交流。商会促请政府官员能够在未来制定相关规定时考虑到行业的反馈信息。

## 快递终端收货人

快递末端网点身份问题一直是困扰行业的难题。相关部门在过去一段时间也一直寻求改革措施，期望通过末端网点备案形式替代工商注册登记，减轻企业负担。在相关政策研究过程中，商会也呼吁相关部门能就国际快递业务进行调研，充分考虑国际快递有别于国内快递的特点，特别是国际企业在市区一些小的操作站点也应被视为末端网点性质，不用强制要求注册登记。

## 建议

### 对中国政府：

- 期待在国家层面加快建立快递行业安全监管统一领导框架，明确监管主体，统一全国监管措施。
- 以国家邮政局现有信息系统为基础，建立监管部门之间的数据分享平台，减少各部门自行向企业索取数据的行为。
- 网络安全主管部门和快递监管部门应共同研究制定合理的快递行业数据安全评估体系。
- 在快递末端网点建设中考虑国际快递企业服务站点的特点，将其纳入改革范围。

# Food and Beverage

## Introduction

Following the implementation of the 13th Five-Year Plan on Food Safety, the issue of food safety became a major political task for governments at all levels in 2017.

## Recent Developments

### *Achievements in Coordinating the Multi-department Food Safety Supervision System and Standardized Procedures for Food Production and Operation*

Since the beginning of 2017, China's food safety regulators have introduced new measures, laws and regulations to strengthen the management of food safety rumors, personnel and punishment for illegal practices. For example, the Notice on Enhancing the Prevention, Control and Governance of Food Safety Rumors, is an outstanding result of joint efforts by many departments, and should greatly prevent food safety rumors, thus protecting consumers.

### *Trends in Emphasizing Process Management*

AmCham China has watched the creation of the current system of food safety standards and noted a positive trend toward greater attention being placed by the food safety supervisors on process management from farm to table, shifting the focus from the formulation of general standards to process management.

In addition, Chinese standards are gaining greater international influence. At present, China is the only developing country that hosts the Food Additive Committee and Pesticide Residue Limits Committee of the Codex Alimentarius Commission (CAC), and led efforts to introduce nine international standards.

### *Positive Developments in Food Import and Export Management under Clearer Governance Concepts and Continued Improvement in Trade Facilitation Initiatives*

In 2017, there were a number of positive developments in China's supervision system on food import and export. The new supervision system demonstrated new concepts of

"cross-departmental cooperation," "shared responsibilities" and a "multiple measures approach." When formulating policies on official certificates for imported food, attracting attention from various stakeholders, the Chinese quality supervision departments actively sought comments from all relevant stakeholders to finally agree to allow a transition period of two years before beginning implementation. This example showcases an open, practical and science-based approach in China's development of legislation.

More optimized measures in food imports and exports have also been introduced, such as credit management, risk and classification management, and pre-inspection. Such measures make all procedures of inspection and quarantine more transparent, thereby improving clearance efficiency. In addition, the application of the electronic inspection and quarantine system in China (e-CIQ) has improved paperless whole-process management, making trade more convenient.

### *"Healthy China Strategy" to be Implemented with the Launch of Multiple Supporting Regulations*

2017 was the first year in which the "Healthy China 2030" Blueprint was implemented. Accordingly, the Chinese government released a series of top-tier guidelines in 2017, including the National Nutrition Plan (2017-2030), and promoted its "Three Reduction, Three Improvements" initiatives across the country (reducing salt, oil and sugar and promoting healthier teeth, weight and bones). The introduction and implementation of those policies further clarifies the direction for achieving health-orientated and coordinated development in the food industry and for improving the general health of Chinese citizens with input from all relevant stakeholders.

## Ongoing Regulatory Issues

### *Suggested Improvements to Safety Standards*

#### *Introduce National Management Rules to Standardize the Formulation and Application of Various Food Standards*

AmCham China calls for the issuance of National Management Rules of Food Standards guided by Standardization Law of the People's Republic of China to specify the relationship

# 食品与饮料

## 引言

一年来，在《“十三五”国家食品安全规划》的指引下，食品安全已经成为各级政府的重大政治任务。

## 最新进展

### 多部门食品安全监管体系联动初见成效，生产经营更趋规范

2017年以来，中国食品安全监管机构在制定食品辟谣相关法规、完善食品安全人员管理、加强食品安全违法行为查处等方面均有建树。

举例来说，《国务院食品安全办等10部门关于加强食品安全谣言防控和治理工作的通知》明确规定了针对食品安全不实谣言的惩处办法。该《通知》的出台是一次多部门食安监管体系联动的卓有成效的努力，必将很大程度上控制谣言产生和传播，保障广大消费者的根本利益。

### 标准法规体系逐步向过程监管倾斜

中国现行的食品安全标准体系初步建成的基础上，中国食品安全监管体系越来越重视食品安全监测，即从农田到餐桌的过程管理，有逐步减少制定大而全的标准体系的良性趋势。

另外，中国标准的国际影响力也不断扩大。目前中国是唯一担任国际食品法典委员会食品添加剂、农药残留两个委员会主持国的发展中国家，已牵头制定了9项国际标准。

### 更为清晰的进出口食品安全治理理念，不断完善贸易便利化举措

2017年，中国进出口食品安全治理监管制度日益完善。新监管体系体现了多方合作，责任共担，多措并举的治理理念。在广为关注的进口食品随附官方证书相关政策制定

方面，质量监督部门积极听取各方意见，最终决定将相关政策执行的过渡期延长两年，体现了开放务实、科学决策的监管作风。

与此同时，进出口检验检疫领域不断出现新的优化措施，如信用管理、风险和分类管理、预先检验等，使检验检疫工作更透明，通关效率更高。另外，中国电子检验检疫系统（e-CIQ）的全面上线推进了全流程无纸化进程，进一步提高贸易自由化便利化水平。

### 配套法规陆续出台，“健康中国战略”步入实施阶段

2017年是落实《“健康中国”2030规划纲要》的元年，中国政府先后印发了包括《国民营养计划（2017—2030年）》在内的纲领性文件，并在全国推广“三减三健”（减盐、减油、减糖、健康口腔、健康体重、健康骨骼）活动。上述政策的出台和实施，为集合社会各方力量，引导食品行业健康有序发展并发挥其积极作用，共同推动国民健康水平的提升指明了方向。

## 现存监管的问题

### 食品安全标准体系仍有完善空间

#### 考虑出台国家食品标准体系管理规定，规范各种不同标准的出台和使用

中国美国商会（商会）建议在标准化法的指导下，出台国家食品标准体系管理规定，明确食品安全标准与其他食品行业标准、团体标准等之间的关系，明确企业标准、团体标准的制定和使用规则，避免食品标准体系无序扩充。比如，目前只有少数地方出台了详细的企业标准备案规定，食品行业仍无法完全理解企业标准应该如何备案和使用；各个团体大有批量出台相关团体标准之势，对企业造成很大的困扰。

between food safety standards and other food industry standards, clarify the formulation and application of enterprise and community standards, and avoid the disorderly expansion of the standards system. For example, only a few local governments issued detailed regulations on the filing of enterprise standards, while the food industry is unable to discern how to file such standards at the local government level. In addition, many communities are issuing individual standards, confusing many enterprises.

In addition, such a rule should also specify the application of food safety standards. For instance, it should set a grace period for implementation, specify the scope of application differentiating the old and new standards, clarify the relationship between technical specifications of food safety standards and administrative penalties, and specify the role of non-food safety requirements in food safety standards.

#### *Draw from a Variety of Existing Standards to Improve Food Safety Standards*

It is suggested that existing standards be strengthened through the following actions: specifying measures of managing secondary additives and additive repackaging as early as possible; enhancing the formulation and amendment of sanitary guidelines (another type of standards); cooperating with food supervision departments to better use guideline-type standards in order to simplify the process of production permits application.

#### *Establish a Flexible Independent Nutrition Standard System*

It is suggested that an independent nutrition standard system be established. This is to separate nutrition standards from food safety laws to help reduce implementing costs and benefit industry transformation and upgrading. Moreover, considering the multi-faceted nature of nutrition issues, it is suggested that international practices be followed and that more guidelines and recommendations be introduced instead of compulsory standards.

#### ***Joint Efforts by Government, Enterprises, and Society to Promote a “Healthy China”***

AmCham China acknowledges the Three-Step Development Strategy proposed by relevant departments to implement the National Nutrition Plan (2017-2030) in phases, following a scientific and ordered manner. Our members hope that regulators will be open to suggestions from all relevant stakeholders in their policy making process, and formulate practical, just and reasonable laws, so as to promote self-discipline and industry transformation and upgrading, help customers develop healthy eating habits and lifestyle, and improve China's public health. Currently, the food industry is supporting state research institutes to conduct studies on the basic

nutrition and health of Chinese citizens as a means of providing a point of reference to regulators as they formulate reasonable policies.

Our members also urge government regulators and scientific research institutions to promote popular science, inform consumers on how to interpret the labels on prepackaged food, and provide more scientific information about food, beverages, important nutrients, and additives. The government should work to eliminate misunderstanding caused by incorrect or incomplete information, help consumers make rational choices to develop their healthy diet habits, avoid panic resulting from food-related rumors, and boost public confidence in food safety.

#### ***Regulatory and Supervisory Issues Concerning Food Safety Supply Chains***

##### *Strengthen Key Responsibilities of Food Producers and Operators in Creating a Food Traceability System*

According to Article 42 of the Food Safety Law of the People's Republic of China, state food and drug supervision departments introduced two implementing regulations, emphasizing that supervision departments at all levels should not require food and drug producers or operators to accept designated traceability services. However, in practice, many local governments still utilize different traceability management platforms on food safety, requiring producers and operators to upload product information batch by batch or connect their own systems to those platforms.

In line with international best practices, AmCham China recommends an effective traceability platform that can focus on food categories with high risk and cover the whole food chain, as well as all supervision departments nationwide to avoid different standards and incompatibility. In addition, the platform should avoid asking enterprises for sensitive data.

It is suggested that relevant departments jointly formulate a transparent traceability framework and give clear instructions to local governments that specify the importance of a traceability system covering the whole food supply chain and the government's role in building such a system.

##### *Clarify Food Safety Responsibilities throughout the Supply Chain and Exempt Enterprises that Fulfill Due Diligence Requirements*

Food producers and operators shoulder different responsibilities for food safety at different points in the supply chain, and they should fulfill their respective responsibilities at each stage of production. However, many policies, laws, and regulations currently group producers and operators together for regulatory purposes. This often causes

同时，该管理办法还应对食品安全标准使用方面的问题进行明确规定。比如实施缓冲期问题；新旧标准适用问题；食品安全标准的技术特性与行政处罚的关系问题；食品安全标准中的非食品安全要求该如何定位的问题等。

### **进一步完善食品安全标准体系，积极发挥不同类型标准的积极作用**

在现有标准体系基础上，对食品添加剂管理体系中的次级添加剂、添加剂分装等急需解决的行业问题进行明确；加强卫生规范类标准的制修订以及在这类标准上与食品监管部门的协同工作，从而使规范类标准在减化生产许可证发放过程中发挥积极作用。

### **考虑建立独立的形式灵活的营养类国家标准法规体系**

建立独立的营养类国家标准法规体系。避免将营养类标准与食品安全法进行直接挂钩，有利于降低执行成本，也帮助推进食品行业向营养健康的方向转型升级。另外，鉴于营养问题的多样性，商会建议在建立营养标准体系时考虑参照国际惯例，多用指南、推荐性文件，减少强制性标准比例。

### **构建政府、企业、社会共治格局，和谐共建“健康中国”**

商会支持相关决策部门提出来的“三步走”战略，分阶段、科学有序地推进《国民营养计划（2017-2030）》的实施，

商会期望相关决策部门在制定营养健康政策的过程中，充分听取各方意见，制定公正合理的政策法规，积极推动行业自律和转型升级，并帮助消费者建立健康的膳食结构和生活习惯，促进全民健康水平的提升。目前食品行业正在积极配合国家科研机构进行国民基础营养健康状况调查，为监管部门提供合理的政策制定依据。

同时商会也呼吁加大科普宣传力度，积极向消费者传递有关预包装食品标签解读、食品饮料以及重要营养素和添加剂的科学知识，消除由于信息不正确或不完整产生的误解，帮助消费者理性选择，实现科学膳食；同时有效避免食品谣言引起的恐慌，增强公众对食品安全的信心。

## **食品安全产业链有关的法制建设及监管问题**

### **加强生产经营者追溯主体责任**

根据《食品安全法》第42条规定，国家食品药品监管部门出台了两项具体规定，强调各级食品药品监管部门不得强制要求食品药品生产经营者接受指定的追溯服务。但在实际操作层面，许多地方政府仍建立了不同的食品安全信息追溯管理平台，要求生产经营者上传每批次产品信息或规定企业信息系统接入监管部门的信息平台。

参照国际成功经验，商会认为，有效的全食品链追溯信息平台应侧重覆盖高风险品类并横跨各监管机构并覆盖全国，避免标准不一、互不兼容的情况；同时信息不涉及企业敏感的质量指标数据。

建议国家相关部门能联合制定透明的国家总体追溯框架，并给予地方政府明确指引，明确全产业链追溯的意义及政府的角色定位。

### **明确产业链各环节食品安全责任，鼓励企业尽职责**

从整体产业链看，食品生产者 and 经营者承担着不同的食品安全责任，各环节应该各尽其责。但目前许多政策法规都将生产者和经营者合并进行规制，容易造成责任混淆，掩盖食品安全根源问题，不易追责。商会建议明确生产者、经营者的各自责任，增加或细化生产者、经营者尽职尽责的具体要求和标准，建立有效的“尽职尽责”机制和责任追溯管理，避免被动担责现象。

### **完善“责任到人”相关制度设计**

为进一步落实“四个最严”的重要指示精神，制定中的《食品安全法实施条例》、《食品药品安全欺诈行为查处办法》增设了“责任到人”的相关条款，在现有的食品安全监管领域针对相关责任人增加了财产罚这一行政处罚种类。考虑到后续实施的可能性和有效性，商会呼吁在相关条款的制定中充分考虑：

- ❶ 明确各相关责任人的职责，确保其未能履行相关职责时，才需承担相应的法律责任。
- ❷ 引入尽职尽责条款，若相关责任人没有明知故意或过错，或者其已经履行了相关职责，则可免除财产处罚。
- ❸ 出台执行指引，减少地方执行层面可能产生的问题，如在以工资基准的罚金难认定、处罚难落。



confusion regarding responsibilities, making it difficult to pinpoint the root cause of a given food safety problem. AmCham China recommends that steps be taken to clarify the respective responsibilities of producers and operators, increase or elaborate due diligence requirements and standards for operators, and exempt enterprises who fulfill their due diligence requirements from responsibilities for food safety issues associated with products that they purchased from upstream suppliers. This will also help to encourage producers and operators by minimizing the risk of becoming a scapegoat.

### Design a Comprehensive System for “Imposing Punishment on the Liable Person”

The Implementing Rules of the Food Safety Law and Measures for Investigation and Treatment against Food and Drug Safety Fraud, which are still in formulation, have added articles about “imposing punishment to the liable person,” and added penalty measures against the liable person in existing supervision policies on food safety. Considering the feasibility and effectiveness of implementation, we propose the following recommendations for designing the regulation and its implementing system:

- ❶ Specify the responsibilities of each liable person to ensure that legal obligations are imposed due responsibilities are unfulfilled.
- ❷ Incorporate the principle of “no punishment when due responsibilities are fully performed” into the system. If the liable person bears no knowing intention or fault, or his or her responsibility has been fulfilled, penalties against this person can thus be exempted.
- ❸ Introduce enforcement guidance to reduce possible implementing issues concerning local law enforcement (e.g., difficulties in determining penalty based on salary and in implementing the penalty).

### Align Supervision Standards of Access Permits for Edible Agricultural Products

Compared with pre-packaged food, edible agricultural products in China are facing greater challenges, with more blind spots in supervision.

AmCham China suggests that revision of the Agricultural Product Quality Safety Law of the People’s Republic of China be completed and published as soon as possible, ensuring alignment with the Food Safety Law, as well as the general safety standards of agricultural products and food quality in general to solve long-lasting problems. Our members also call for strengthened alignment between the permits for agricultural products to exit their place of origin and to enter the market, for strengthened tests and supervision on the wholesale sector, and specified, detailed obligation norms and industry standards.

## **Regulatory and Supervisory Issues Concerning Food Production and Operations**

### Standardize Policies and Practices in Product Spot Checking

AmCham China members suggest that food sampling inspection system in China should be improved in four aspects:

- ❶ Food sampling procedures should be standardized to improve the efficiency of spot checking. In addition, testing methods for adulteration and illegal additives should be developed, including for functional foods and new kinds of food.
- ❷ The monitoring and inspection of microbes should be shifted from end-products testing to process management. For example, promoting process control systems (e.g., Hazard Analysis and Critical Control Points, HACCP) in some key industries to control or prevent microbial contamination.
- ❸ Develop top-down national monitoring network and platforms to avoid repetitive sampling inspection. In the meantime, data accumulated by the food safety credit management system can be used to manage food production and operations based on cascaded risk levels. It can also be used as the basis for spot checking and monitoring practices.
- ❹ Improve the professionalism of inspection team (particularly at the local level) through trainings. When establishing a professional inspector system, spot checking can be defined as a basic skill. For professional testing institutes, we recommend that the imbalance between “quality” and “quantity” be resolved through market competition.

### Standardize Policy Interpretation and Law Enforcement; Improve Professional Competency of Local Law Enforcement Officers

Supporting laws and regulations have been formulated under the framework of Food Safety Law. Governments at all levels have also introduced relevant local regulations. However, some local rules do not correspond with the general rules laid out by the state. Many regional governments in central and southern China require local traceability platforms. Governments in northern China set different requirements for stores to establish fast inspection laboratories, and adopt measures such as holding government talks and encouraging media exposure against those who are not compliant.

In addition, the “Bright Kitchen” policy was widely promoted in the catering industry in 2017, turning general encouragements into mandatory requirements or even a prerequisite for permit application. In addition, various local government supervision structures tend to result in different interpretations of state laws and law enforcement. AmCham China

## **食用农产品产地准出与市场准入监管标准衔接**

与预包装食品相比，中国食用农产品的食品安全整体挑战更大，监管盲区更多。

商会建议，正在起草更新中的《农产品质量安全法》应做好两个衔接，即该法与《食品安全法》的衔接和农产品质量安全标准和食品安全标准的充分衔接，解决一些长期存在的问题。同时，商会继续呼吁加强农产品产地准出和市场准入相关对接政策的制定，强化对批发环节的产品检测和监管，明确和细化经营企业食用农产品尽职免责标准或行业规范，并完善相关标准衔接。

## **食品生产和经营管理现存问题**

### **进一步规范统一产品抽检相关制度和实践**

商会会员企业认为中国的食品抽样检验制度需要下列四个方面进行完善。

- ① 统一和完善食品抽样、取样等规程标准，提高检测监测工作效率；并研究出台针对食品掺假、非法添加物质的检测方法以及对食品添加剂、保健食品以及新型食品的检测方法。
- ② 微生物的监测和检测应逐步从终产品检测过渡到过程监测。例如在某些重点行业推行以危害分析和关键点控制体系（HACCP）为代表的过程控制体系，以控制或预防危害，尤其是预防不可见的微生物污染。
- ③ 通过顶层设计构建全国性的监测网络的平台，避免重复抽检。同时，充分发挥食品安全信用管理制度全面推广后积累的数据，对食品生产经营开展风险分级管理，以此作为抽检和监管的安排依据。
- ④ 进一步通过专业化培训来提升抽检人员（特别是地方人员）的专业性。职业化检查员制度的构建可以考虑将抽样技能作为检查员的能力要求。而对于专业的检验机构而言，建议通过市场手段来调节“质”“量”不平衡的问题。

### **统一政策解读和执法标准，加强地方执法人员专业能力建设**

在新《食品安全法》的大框架下，国家配套出台了一系列食品安全管理相关法规，各地政府也纷纷出台相关政策法规。部分地方细则与国家通则不相协调，如华中、华南等多地政府颁布当地政府追溯平台要求；华北等地政府

对门店建立快检实验室提出不同要求，并对违规者采用政府约谈、媒体曝光等措施；再比如今年以来各地大力推行的餐饮业“明厨亮灶”政策，国家层面的鼓励措施在许多地方变成了强制要求，甚至成了证照办理的前置条件。此外，各地政府食品安全监管架构不同，监管人员的能力和水平也存在较大差异，各地出现政策法规解读和执法标准不统一的情况。

因此，商会建议在国家层面出台法律法规时尽量厘清关键性概念，逐渐统一审核标准和审核项目，实现审核标准化，降低地方执法差异的可能性；加强对地方政府的政策法规培训；建立政府与企业沟通窗口，针对企业反馈给予地方指导。

### **就职业索赔人与惩罚性赔偿制度展开深入研究**

近年来，随着中国《消费者权益保护法》“三倍赔偿”条款和《食品安全法》“十倍赔偿”条款的先后出台，职业索赔逐渐兴起并不断增多，并呈现出日益明显的职业化、专业化、公司化发展趋向；而随着《最高人民法院关于审理食品药品纠纷案件适用法律若干问题的规定》中关于“知假买假”内容的出现和被滥用，甚至出现了索赔行为的异化。

为此，商会与食品安全治理协同创新中心开展合作，完成了《食品领域职业索赔社会评价与政策建议研究》报告。作为首个以“职业索赔人”为对象的研究项目，该报告通过大量实证研究后提出，探索惩罚性赔偿制度根据食品安全风险等级进行细分的相关规定，以便更好发挥其正向引导性作用的建议。此外，商会建议也可考虑将“职业索赔人”投诉纳入《食品药品违法行为举报奖励办法》的范畴进行统一规范管理，充分发挥上述鼓励机制的积极作用，引导“职业索赔人”关注真正的食品安全违法问题。

## **进出口食品法规相关问题**

### **进一步完善进口食品安全治理制度体系设计，尽快出台配套制度的具体方案**

《进出口食品安全监督管理办法》草案已于2017年9月初步完成修订并通报WTO征集各成员国意见。但目前该草案中提到的部分配套制度在设计和操作细节方面仍不够清晰明确，如果涉及扩大适用范围，还需要进一步明确针对新增品类的操作细则。

比如，风险评估和风险分级的管理模式在实施或扩大适用范围时，针对低风险品类，信用和合规记录良好的企

recommends that key concepts be illustrated as clearly as possible, gradually unifying verification standards and projects, and reducing differences in regional law enforcement. The central government could also provide more training in laws and regulations to regional governments. Moreover, communication channels between the central government and enterprises could be established to provide guidance to local governments based on enterprise feedback.

### *Conduct In-depth Research on Professional Claimants and the Punitive Compensation System*

In recent years, as the Law of the People's Republic of China on the Protection of Consumer Rights and Interests and Food Safety Law of the People's Republic of China have respectively included articles on "triple compensation" and "ten-times compensation," professional claimants have gradually emerged as a growing force in the market. This phenomenon of professional claimants is becoming more vocationalized, with increasing numbers of companies being established to serve this purpose. As the Provisions of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Food and Drug Dispute Cases allows customers to "buy a fake intentionally," this law is increasingly abused to blackmail businesses for compensation.

Thus, AmCham China cooperated with the Center for Coordination and Innovation of Food Safety Governance in compiling the report Social Evaluation and Policy Suggestions on Professional Claims in Food Industry. This report is the first research project on professional claimants, including broad empirical research, and proposes detailed risk classification standards for a punitive compensation system to avoid a negative social impact. In addition, AmCham China suggests that complaints of "professional claimants" be incorporated into the Incentive Measures for Reporting Illegal Food and Drug Practices, to guide "professional claimants" to focus on real food safety malpractices.

### ***Regulatory and Supervisory Issues Concerning Food Import and Export***

#### *Improve the Governance System of the Safety of Imported Food and Formulate Detailed Supporting Measures*

AmCham China is encouraged to see that the Measures for the Supervision and Administration of Import and Export Food Safety (draft) was amended and submitted to the WTO for review in early September 2017. However, some supporting measures are not sufficiently clear in terms of design and operating procedures. If their application is extended, implementing details regarding newly added food categories should be further explained.

For instance, when implementing new measures or extending the application of existing measures of risk assessment and risk classification, it is suggested that inspection steps be

simplified for enterprises with good credit and compliance history and industries with low-risk product categories. It is also necessary to devise proper regulations for many small- and medium-sized enterprises.

### *Labeling Management of Imported Pre-packaged Food*

Increasing domestic demand for imported food and labeling from across the world have led to labeling becoming one of the biggest challenges for import inspections. For example, labeling classification issues have prevented many food categories from gaining market entry permits.

It is worth mentioning that the new food safety law allows products with improper labeling to be recalled to revise their labels, and allows them to be re-imported and sold if food safety is ensured. In view of the new Food Safety Law, we suggest that the supervision department focus on food safety and give products with improper labeling without safety concerns a second chance, so that supervision efficiency can also be improved.

### *Open Green Channels for Pre-packaged Food, Raw Materials and Additives for Research Purposes*

Since the imported foods, materials, and additives used for R&D are not used in the production of final consumer goods and are small in quantity, they do not entail food safety risks. As such, we recommend that regulators consider opening a "green passage" to simplify the filing procedures of such products for research purposes, in order to focus supervision on the traceability of raw materials and achieve effective supervision.

### *Requirements on Certificates Attached to Foods Exported to China*

AmCham China fully understands that relevant departments are facing difficult challenges caused by the large scale of imports and the highly fragmented nature of food and beverage products. However, there still exist some challenges regarding the feasibility of obtaining the official certificates required to be attached to imported foods. Accordingly, AmCham China has given feedback to the quality supervision and management departments. Our members hope to continue our good communication with the regulators during the transition period, in order to find a more effective solution for import food supervision that ensures both food safety and trade facilitation.

### *Search for more Effective Import Supervision Measures*

AmCham China understands the Chinese government attaches great importance to food safety and that imported food must adhere to relevant rules. For example, dealers who import and export food must file their documents; overseas

业和行业宜采取相对简洁的商检措施。此外，为广大中小企业制定适宜的监管措施。

### **进口预包装食品标签管理**

随着广大消费者对进口食品需求的不断增长，加之国内外繁多的标签种类，标签问题已经成为进口查验的一大挑战。例如标签中的归类界定问题，令相当数量食品无法顺利进入中国市场。

新食品安全法规定对标签不符合标准的产品可以采取召回修改标签等补救措施，并允许在保证食品安全的情况下重新进口或销售。鉴于此，商会建议遵循食品安全法的精神，将主要的监管资源集中在食品安全问题上，对于存在标签瑕疵的进口食品，如不存在食品安全问题，可给予适当整改机会。

### **为研发用途的预包装食品，食品原料及食品添加剂进口开创绿色通道**

鉴于用于企业研发创新的食物、原料、添加剂等的进口并非用于最终消费品的生产、货量也很小、不会造成食品安全风险，商会建议相关部门考虑针对此类产品进口开通绿色通道，简化备案手续，将监管重点放在原材料使用的可追溯性方面。

### **随附证书制度**

商会深刻理解中国的食品进口规模和食品饮料行业高度碎片化的特点为进口食品的安全监管所带来的巨大难题，以及主管部门所面临的严峻挑战。商会认为现有进口随附官方证书要求中还存在一些实践的操作难题，商会此前已向质量监督管理部门进行了意见反馈。商会期待在过渡期内继续与主管部门沟通，从兼顾进口食品安全监管和贸易便利化的角度出发，为进口食品监管找到更高效的解决方案。

### **继续探索更有效的进口监管方式**

商会理解中国政府高度关注食品安全，进口食品须遵守相应的规定和要求，例如，进口食品前进出口商需要备案、国外生产企业和输华企业需要注册，进口时需随附官方证书，其中证书内容同时包括了进口商备案信息、生产加工企业注册登记编码等信息。在上述各项要求执行时会产生数据反复收集的问题，降低了各方工作效率。商会愿意配合政府部门共同探讨高效统一的解决方案，如通过政府大

数据或者电子检验检疫系统，实现信息在不同部门之间、中央和地方之间的信息共享，以提高监管流程的效率。

## **建议**

### **对中国政府：**

- 在政策及标准制定过程中充分利用商协会平台，创建公私合作项目或定期交流机制，鼓励国际先进经验及技术的分享。
- 不断加强检测机构和执法队伍建设，提高执法人员专业水平，持续推进标准化执法，以加强各地法规的统一、准确解读与执行，并继续呼吁建立企业与立法部门沟通的公开渠道和机制，对于企业遇到的法规解读和执行层面的问题给予及时回应。
- 进一步完善进口食品安全治理制度体系设计，尽快出台配套制度的具体方案；简化检测研发用进口样品检验检疫流程。
- 继续完善食品安全国家标准体系，考虑出台国家食品标准体系管理规定，规范各种不同标准的出台和使用，积极发挥不同种类标准的积极作用，并探索独立灵活的营养标准体系。
- 将现有地方食品安全监管结构纳入一套统一的国家体系之中，进行相关培训及具体案例分析，地方监管机构可将此等案例作为参考先例，并在该先例框架下进行相关监管活动。

### **对美国政府：**

- 加强美国政府相关主管部门、行业协会等与在华美企的交流，针对中国政府亟需了解的国际经验、最佳实践等，增加由各方参与的研讨机会。

manufacturers and import dealers need to register in China; and official certificates containing information relating to dealers and manufacturers should be attached to imported foods. However, there is some overlap in the implementation of the above requirements, lowering the work efficiency of all related parties. We would like to discuss the issue with the Chinese government to find an efficient, unified, and convenient solution. For example, with the help of the government's big data or the electronic inspection and quarantine system (e-CIQ), information can be shared between different departments, and between central and local governments, so as to improve the efficiency of the supervision process.

*For the US Government:*

- **Enhance communication between corresponding US government agencies, industry associations and US enterprises operating in China, and organize more seminars involving various stakeholders on international experience and best practices for the Chinese government.**

**Recommendations**

*For the Chinese Government:*

- **Make good use of the industry association or chamber platform to create more public-private partnerships or bilateral communication channels to develop and implement regulations and standards, so as to adopt the best international practices and advanced technologies from non-governmental stakeholders.**
- Continue to strengthen the development of testing organs, the professionalism of law enforcement officials, and the standardization of law enforcement in order to ensure the uniform and accurate interpretation and implementation of regulations nationwide. Additionally, establish a public channel and mechanism for communication between enterprises and legislative bodies and provide timely interpretations on the implementation of relevant legislation.
- Improve the design of the governance system for the safety of imported food, formulate detailed supporting measures as early as possible, and simplify inspection and quarantine procedures for imported R&D food samples.
- Strengthen the national food safety standards system by considering the introduction of national food management rules to standardize formulation and application of different type of standards. The government can also give full play to a variety of standards and find ways to establish an independent, flexible nutrition standard system.
- Integrate local supervision structures into the national system. The central government should conduct relevant training and provide case studies for the local regulators' reference.



# Healthcare Services, Pharmaceuticals, and Medical Devices

## Healthcare Services

In October 2016, China published the “Healthy China 2030 Planning Outline.” President Xi Jinping has stressed the importance of putting health at the center of China’s policy formulation mechanism, which includes the need to consider health in all government policies. AmCham China applauds this overarching strategy and hopes that the guidelines in the “Healthy China 2030” initiative will be implemented at all levels of government. Foreign-invested medical institutions can play a role in meeting the goals of “Healthy China 2030” and should be encouraged to participate.

### *Corporate Tax Rates*

The Chinese government has expressed interest in “gradually expanding the scope of foreign investment in building medical institutions, and in encouraging the development of professional hospital management groups” in the “Healthy China 2030” outline. However, joint venture (JV) healthcare providers are not currently permitted to open branch hospitals and must register all medical centers separately. JV healthcare providers are also not able to consolidate the accounts of medical centers as a single entity for tax reporting purposes, even if the medical centers are in the same city. This means that profits of one medical center cannot be used to offset the losses of another medical center under the same company. This policy can cause the effective tax rate of a developing enterprise to exceed 100 percent, especially during the initial stage of three to four years after a new hospital is established.

Private medical institutions currently pay the standard maximum corporate income tax of 25 percent, even though many industries enjoy a preferential tax rate of 15 percent. Such preferential tax rate would help to attract more private investment in the healthcare field, build a better environment for investment and development, and minimize the risk of investors sacrificing quality and safety in pursuit of financial returns.

AmCham China recommends that the Chinese government sets a preferential tax rate for foreign-invested medical institutions and allows management companies to consolidate the accounts of their medical centers for tax reporting purposes.

### *Cap on Foreign Ownership*

In December 2016, the National Development and Reform Commission (NDRC) and Ministry of Commerce (MOFCOM) jointly released a draft revision of the “Catalogue of Industries for Guiding Foreign Investment.” Medical institutions remain a “restricted” industry for foreign investment instead of an “encouraged” industry. Foreign ownership of medical institutions continues to be capped at 70 percent, which hinders the development of many excellent foreign-invested medical institutions. Moreover, it sets unnecessary thresholds for established foreign-invested medical institutions to open branch hospitals and clinics and restricts foreign-invested medical institutions from becoming part of the hierarchical medical treatment system in China.

AmCham China urges the Chinese government to change the status of foreign-invested medical institutions so that it becomes an industry in which foreign investment is encouraged rather than restricted. We also recommend that the government remove shareholding restrictions on foreign investment in medical institutions using JV and foreign-invested partnership ownership structures. This would allow quality foreign-invested medical institutions to make a stronger contribution to the development of the medical field in China.

### *Eligibility for Social and Commercial Health Insurance*

At present, only hospitals complying with government-guided prices are eligible for coverage under the government’s basic medical insurance (BMI). To avoid the over treatment that results from the public pricing system being based on artificially low healthcare prices, private hospitals operating in accordance with international standards often choose to price medical services differently, making them ineligible for BMI reimbursement.

In parallel, commercial health insurance has been proven to be a complementary solution that helps finance the healthcare system. Introducing a more health-oriented insurance package will lead to greater incentives for increasing disease prevention and health management awareness. Beginning in 2016, the government has set the ceiling on individual income tax deductions at 200 RMB per month (2400 RMB

# 医疗卫生服务、药品和医疗器械

## 医疗卫生服务

2016年10月，中国发布了《“健康中国2030”规划纲要》（“健康中国2030”）。习近平主席强调了政府将人民健康放在优先发展的战略地位的重要性，包括考虑把民众健康融入所有政策的必要性。中国美国商会（商会）对这一总体战略表示赞许，并且希望“健康中国2030”的指导方针能够在各级地方政府层面得到实施。外资医疗机构能够帮助达到“健康中国2030”的目标，应当鼓励参与。

### 企业所得税税率

中国政府在“健康中国2030”规划中表示有意“逐步扩大外资兴办医疗机构的范围，鼓励发展专业性医院管理集团”，但是中外合资医疗服务提供者不得开设分支机构，且必须对每一家医疗点都单独进行注册登记。他们纳税时也不能合并处理旗下医疗点的账目，包括同一城市内的医疗点。这意味着，同一公司的一家医疗点的利润不能冲抵另外一家医疗点的亏损。这样可能导致企业总体负担的实际税率超过100%，特别是在新医院开设后3-4年的起步期内。

私人医疗卫生企业目前仍然按照25%的普通税率缴纳企业所得税，而很多行业都享受15%的企业所得税优惠税率。这种优惠税率能够帮助医疗领域吸引更多私人投资，创造更加健康的投资和发展环境，最小化投资者为获取利润而牺牲质量的风险。

商会建议中国政府允许外资医疗机构享受优惠税率，允许管理公司纳税时合并处理旗下所有医疗点的账目。

### 外商投资所有限制

2016年12月，国家发展和改革委员会和商务部共同发布《外商投资产业指导目录》，医疗机构没有被列入“鼓励投资”类，而是被列入“限制外商投资”类。医疗机构外资持股比例继续被限制在70%，阻碍了很多优秀的外资医疗机构的发展。另外，中国对已经设立的外资医疗机构

开设分支机构设置了一些不是十分必要的限制，同时还限制了外资医疗机构参与到中国的分级诊疗体系当中。

商会促请中国政府改变外资医疗机构的现状，使之成为鼓励外商而非限制外商投资的行业。商会也建议中国政府取消中外合资和外资合伙医疗机构的门槛限制。这将使优质外资医疗机构能够更好地推动中国医疗领域的发展。

### 纳入医保报销范围，强化商业健康险

目前，只有执行政府指导价的医院被纳入基本医疗保险（医保）报销范围。为了避免基于人为的低医疗价格的公共定价制度造成的过度医疗，遵照国际标准开展经营的私立医院往往对医疗服务采取不同的定价方式，但也因此无法纳入医保报销范围。

同时，商业健康险是公认的医疗体系筹资的有效补充。提供更多以健康为导向的险种将帮助人群提升自我健康意识从而实现疾病预防和健康管理。政府自2016年起将个人所得税减免额度设为每月200元人民币，即年度2400元。基于中国的快速经济发展，此额度有限需要调整。

商会建议，如果患者愿意以现款或通过额外的商业健康保险支付差额，则医保应该覆盖私立医院，并为患者报销公立院所允许的最高费用。此外，商会建议提高针对医保保费的个人所得税减免的上限。

## 医疗器械

10月1日，中共中央办公厅、国务院办公厅印发《关于深化审评审批制度改革鼓励药品医疗器械创新的意见》，提出36项重要改革措施（即“两厅发42号文件”）。这是政府最高机构对医药领域下发的文件。该文件体现了从国家层面上对于鼓励医疗器械创新、促进包括医疗器械再评价研究在内的全生命周期监管的深入。该政策的出台进一步释放了行业创新的原动力，尤其利好罕见病药、儿童



per year). Given China's rapid economic development, this amount is limited and subject to adjustment.

AmCham recommends that BMI cover private hospitals and reimburse patients for the maximum amount allowed in public hospitals, if patients are willing to pay the difference out-of-pocket or through additional commercial health insurance. Moreover, we recommend raising the ceiling on individual income tax deductions for health insurance premiums.

## Medical Devices

On October 1, 2017, the General Office of the CPC Central Committee and the General Office of the State Council printed and distributed the "Opinions on Deepening the Reform of the Examination and Approval System for Encouraging the Innovation of Medicines and Medical Devices," and proposed 36 major reform measures (namely, "Document No. 42" issued by the two offices). The document reflects an increase in national-level supervision of the medical device industry, as well as the intent to encourage innovation in and re-evaluation of medical devices. The policy especially benefits R&D and encourages the timely release of equipment urgently needed by medical practitioners and patients, such as rare disease medicine, pediatric medicine, and combination drugs with clinical value.

### Registration

Regarding reforming the review and approval process, the China Food and Drug Administration (CFDA) is making breakthroughs in several policies. AmCham China was encouraged to see that the Center for Medical Device Evaluation (CMDE) is open on every Friday afternoon for pre-submission consultation on new products, and provides an online channel for uploading inquiries, making on-site communication more efficient and relevant. New CFDA regulations also helped to resolve the problem of no new product inquiries being able to be made following changes in the consulting system. In line with this, AmCham China recommends developing a stronger communication mechanism for clinical protocol between the applicant and the evaluation agency before the commencement of a clinical trial. As the clinical protocol is the blueprint of the entire clinical trial, such communication should not be limited to medical devices requiring review and approval before trial. Once the product registration dossiers are submitted, the entire clinical trial is completed. If any modification to the protocol is made in the review process, the clinical trial must be redone, meaning that industry resources are wasted, including medical and evaluation resources. AmCham China therefore recommends opening the consultation channel as soon as possible.

Moreover, clinical trials are intended to identify residual risks after clinical evaluation. Given that imported products undergo complete risk assessment during marketing

approval applications in their country of origin, we recommend that the government remove the requirement to submit the country of origin marketing certificate as part of applications for registration of an imported medical device whose clinical trial is to be conducted in China. The requirement to submit a country of origin marketing certificate should also be removed from the application process for clinical trial or new product registration approval. However, if the applicant for importation of a medical device can provide the country of origin marketing certificate when applying for registration, the requirement for a clinical trial in China should be exempted. In such case, the marketing approval in China will be supported by its overseas clinical data and clinical evaluation results. This will help reduce the gap between China and developed countries in terms of the marketing time for advanced international medical devices.

Furthermore, in line with national decentralization and the reform and implementation of scientific supervision by the drug regulatory authority, the CFDA should consider delegating the review and approval authority for registration renewal to the acceptance office. In this way, the CFDA can focus its technical power on the safety and effectiveness evaluation for new products and modified products to ensure that advanced medical devices can be put on the market and serve Chinese patients as soon as possible.

Finally, imported medical devices that have been marketed in China and whose production lines have been moved to the country without modification will have undergone a safety and effectiveness evaluation during registration and the marketing approval process. After the product is put into production, there is still a need to re-evaluate whether the production quality system is operating effectively to ensure consistent product quality. AmCham China suggests that imported medical devices be treated the same as products that are produced domestically. They should follow Chinese regulations on domestic relocation of production sites to simplify the registration process, emphasize system evaluation, and accelerate the localization of imported medical devices.

### Clinical Requirement

After the release in May 2015 of the "Technical Guidelines for Clinical Evaluation of Medical Devices" (Technical Guidelines) developed by the CFDA and the "Regulations on the Supervision and Administration of Medical Devices" (No. 650 of the State Council), the "Essential Requirements for Clinical Evaluation of In Vitro Diagnostic Reagents Exempted from Clinical Trials" was issued for IVD products on November 8, 2017. It instituted guidelines for clinical evaluation of IVD products which clarified requirements for testing of these products. As such, the new requirements reduce the burden for many in vitro diagnostic reagents companies that carry out clinical trials of IVD reagents.

专用药、具有临床价值的药械组合产品等执业医师和病患急需器械的研发和尽快上市。

## 产品注册

关于改革评审审批流程，国家食品药品监督管理总局正在一些政策中做出突破性改变。商会欣喜地看到总局医疗器械技术审评中心开放每周五下午为新产品咨询时间，并开通在线咨询通道，使得现场沟通更加高效和有针对性。国家食品药品监督管理总局的新规定也协助解决了咨询制度改变后无法咨询新产品的问题。鉴于此，商会建议，临床试验开始前，应在申请人和评审机构之间建立一个更强大的临床方案沟通机制。临床试验的方案是整个试验的蓝图，因此这种沟通不应限于需要临床试验前审批的医疗器械。产品在递交注册资料后，整个临床试验已经完成，在审评过程中如果对方案提出修改，会导致必须重新做临床试验，这样会造成行业资源的浪费，包括医疗和审评资源，所以，商会建议尽快开通这条咨询通道。

其次，临床试验的目的是为了验证临床评价之后的剩余风险，鉴于进口产品在原产国上市审批时已经对产品进行了完整的风险评估，商会建议政府移除已经选择在中国进行临床试验的进口新医疗器械注册申请需要提交原产国上市证明的要求。同时，这一要求也应在临床试验和新产品注册的申请审批流程中被移除。然而，如果进口器械申请人能够在申请注册时提供其原产国上市证明，那么应该免除在中国开展临床试验的要求。在这种状况下，在中国的上市审批将由其境外临床数据和临床评价结果来支持。此举有利于减少国际先进水平器械在中国上市时间与发达国家存在的差距。

再次，依照国家简政放权的趋势和改革以及药监部门科学监管的运用，国家食品药品监督管理总局应考虑将延续注册的审评审批权限进一步下放至受理办进行。这样，国家食品药品监督管理总局可以将技术力量运用到新产品以及有变化的产品安全有效性评估上，并确保先进医疗器械能够尽早上市，服务中国病患。

最后，已经在华上市的进口医疗器械，生产线原样搬迁至境内生产的，需要在注册和上市时对产品本身的安全性进行评估。转产之后，需要再次评估生产质量体系是否有效运行，以保证产品质量稳定。商会建议进口医疗器械应与国内生产的产品受到国内场地搬迁法规的平等对待，以简化注册流程，助力体系升级，加速进口医疗器械国产化进程。

## 临床要求

继2015年5月，国家食药监局发布《医疗器械临床评价技术指导原则》（技术指导）和《医疗器械监督管理条例》（国务院第650号令）后，针对体外诊断试剂类产品的《免于进行临床试验的体外诊断试剂临床评价资料基本要求》也于2017年11月8日发布，制定了体外诊断试剂临床评估指南，阐明了此类产品的测试要求，为诸多开展体外诊断试剂类临床试验的体外诊断试剂类企业减负。

商会会员欣喜地看到国家食药监局不断扩充临床试验豁免目录的范围，并与2017年10月发布了《第三批免于进行临床试验医疗器械目录的通告》，允许第二类医疗器械的37个品类、第三类医疗器械的11个品类、和116个品类的体外诊断试剂类产品豁免开展临床试验。

国家食药监局也参照2017年《白皮书》的建议，积极听取了行业的建议。（近期发布了两个重磅征求意见稿，分别为《医疗器械临床试验设计指导原则（征求意见稿）》和《接受医疗器械境外临床试验数据技术指导原则（征求意见稿）》，规范了医疗器械临床试验的设计和境外临床试验可用于中国注册申报的具体要求。

为了深化与注册方的沟通联络，提升临床试验设计的科学合理性方面，总局在业界强烈呼吁三年之后，出台了《总局关于需审批的医疗器械临床试验申请沟通交流有关事项的通告（2017年第184号）》。这将提高需要临床试验预审批产品的临床设计的准确性和可预测性。

为了加强临床试验基地的日常管理和监督，保障医疗器械试验在有资质的基地得以良好执行，国家食品药品监督管理总局会同国家卫生和计划生育委员会在2017年11月发布了《医疗器械临床试验机构条件和备案管理办法的公告（2017年第145号）》。

综上所述，商会高度赞赏国家食药监局及其相关政府机构对于医疗器械产品上市的适当临床要求的支持，临床要求常常在医疗器械上市的审批过程中遇到瓶颈。商会会员相信以下建议可以帮助解决这一问题，关于进一步免除临床试验，应采取以下措施：

- 进一步明确不需要进行临床试验的情况：这可能包括细化针对技术原理成熟稳定、国内标准法规健全、临床经验数据丰富的器械不需要临床试验验证产品安全有效性的具体条件和判定标准。
- 从产品的成熟度和风险结合角度出发，包括2017年临

Our members were encouraged by the fact that the CFDA is continuously expanding the scope of the clinical trial exemptions list. In October 2017, the “Notice of the Third Batch of Clinical Medical Devices Exempted from Clinical Trial” was issued which allowed 37 categories of Class II medical devices, 11 categories of Class III medical devices, and 116 categories of in vitro diagnostic reagents to be excluded from clinical trial requirements.

CFDA also actively listened to industry suggestions in line with the recommendations of the 2017 White Paper. Recently, two important drafts for comment have been released, namely the “Guidelines for Medical Device Clinical Trial Design (Draft for Comment)” and the “Technical Guidelines for Accepting Overseas Clinical Trial Data of Medical Devices (Draft for Comment).” These standardize the design of medical device clinical trials and specific requirements for registration and declaration of use overseas clinical trials in China.

In order to strengthen communication with registered counterparts and enhance the scientific rationality of clinical trial design, the CFDA issued the “Notice of Relevant Issues on Communication and Exchange of Medical Devices Clinical Trial Applications to be Approved by CFDA (2017 No. 184)” after three years of strong appeals from the industry. This will improve the accuracy and predictability of the clinical design of products that need preliminary approval of clinical trials.

To strengthen the daily management and supervision of clinical trial bases and to ensure that medical device trials at qualified bases can be well implemented, the CFDA and the National Health and Family Planning Commission (NHFPC) jointly released the “Notice on Medical Device Clinical Trial Institutional Conditions and Administrative Measures for Filing” (No. 145 of 2017) in November 2017.

In summary, AmCham China strongly commends the CFDA and other relevant government agencies for supporting suitable clinical requirements for the listing of medical devices. Clinical requirements often create bottlenecks during the approval process for medical devices going to market. Our members believe the following recommendations can help solve this issue. The following actions should be taken regarding further exemption from clinical trials:

- Make further clarifications about the circumstances under which clinical trials are not required. This might include detailing specific conditions and criteria for devices with mature technical principles, sound domestic laws and regulations, and extensive clinical experience data that do need the support of clinical trials to test the safety and efficacy of the product.
- Based on the combination of product maturity and risk, include Class II products in the 2017 Clinical Exemption List.
- Implement clinical evaluation through comparison of analogous products. For example, conduct a full

scale clinical trial on one main product and compare analogous products for approval. Clinical trials of the compared product then only need to cover the “key” differences not included in the main product.

- Requirements for the “same type” products should be revised from “products sold in China” to “products sold in country of origin or products sold in China.”
- Establish a registration database of approved medical device products.
- Publicize the summary information of approved registered products. Clinical evaluation using the “same type” product publicly disclosed in the registered product database should not require a letter of authorization.
- Conduct clinical trials in China, accept results from clinical trials abroad, and conduct global multi-center medical device clinical trials. In relation to this, the following should also be done:
  - ◆ Cancel the requirement of “submit the certificate of listing in country of origin for application for examination and approval of medical device clinical trial.”
  - ◆ Amend the definition of multi-center clinical trial, to change clinical trials conducted in “more than three (including three)” clinical trial institutions to “two or more.”
  - ◆ Make a reasonable distinction between Good Clinical Practice (GCP) requirements for pre-market and post-market clinical trials.

AmCham China also hopes the CFDA will continue its discussions with the US Food and Drug Administration (FDA) and the medical device industry in the US. We also hope the CFDA will consider the use of post-marketing clinical evaluation and real-world clinical data (RWE), and other advanced methods to reduce or exempt companies from the traditional requirements of pre-market medical device clinical trials and clinical evaluation. Additionally, our members hope that the Chinese government will revise regulatory approaches in the medical device sector.

### Standards

In accordance with the current “Provisions for Medical Device Standards”, industry standards are to be reviewed at least once every five years. Due to the rapid development pace and continued innovation in the medical device industry, mandatory industry standards lag behind, and even restrict, product development.

In addition, China is, to some extent, mechanically applying standards to the review of medical devices. This method lacks flexibility and leaves enterprises in a passive position. Similarly, most industry standards are adapted from overseas International Organization for Standardization (ISO) standards. For imported products, these standards align

床豁免清单中的第二类产品。

- 通过比较同品种产品来实施临床评估。例如，在一个主要产品上进行全面的临床试验，并比较同品种产品以获得批准。比较产品的临床试验只需要覆盖主要产品未包含的“关键性”差异点。
- 关于同品种产品的要求应从“在中国销售的产品”修改为“在原产国或者中国销售的产品”。
- 建立已批准的医疗器械产品注册数据库。
- 公开已批准注册产品的概要信息。利用已注册产品数据库中公开披露的同品种进行临床评价应无需授权信。
- 开展境内临床试验、接受境外临床试验报告结果和开展全球多中心医疗器械临床试验的建议：
  - ◆ 取消医疗器械临床试验审批申请“应当提交原产国上市证明文件”的要求。
  - ◆ 修改多中心临床试验的定义，由“在三个以上（含三个）”改为“在两个及以上”临床试验机构实施的临床试验。
  - ◆ 合理区分上市前和上市后临床试验的GCP要求。

商会也希望国家食药监局可继续开展与美国食品药品监督管理局（FDA）和来自美国的医疗器械工业界的交流，商会也希望国家食药监局考虑采用上市后临床评价和真实世界临床数据（RWE）等先进的方法减免对公司上市前医疗器械临床试验和临床评价的常规要求。此外，商会会员希望中国政府修改医疗器械行业的监督管理办法。

## 标准

按照现行《医疗器械标准管理办法》的规定，行业标准应至少每5年复审一次，由于医疗器械行业的快速发展和持续创新，强制性的行业标准将滞后于产品技术发展以至于制约产品发展。

另外，中国在器械审评时的标准适用略显机械化。这种方法欠缺灵活性，导致企业处于被动低位。同样地，大部分行业标准是由境外的国际标准化组织（ISO）标准转化过来，对于进口产品而言，符合了境外的升级版标准，往往就无法符合旧版标准，尤其是电器类产品，基本上不能兼顾，所以商会建议医疗器械行业不再保有强制性标准，一律成为推荐性标准，让行业得到自由发展，产品不断推陈出新。

标准起到的作用是对产品提供技术指导。当标准更新后，需要给予企业一段合理明确的过渡期以完成产品的更新换代。从全国人大立法委员会的解释看，新标准发布到实施有一段过渡期，在过渡期新老标准都是有效标准。符合哪一版的产品都是合规产品。商会希望医疗器械行业能研究并解决这一重叠问题，与全国人大立法委员会保持一致。

## 上市后监管

国家食药监局持续每年提高医疗器械质量公告的发布数量和质量，发布了医疗器械经营管理规范、医疗器械临床试验数据合规性检查和上市后监管检查办法等法律法规，同时对产品质量存在问题的企业开展突击检查、专项检查等一系列举措，确保质量提升。此外，国家食药监局还在提高申请人、生产经营企业和临床试验机构的法律意识、责任和质量标准方面给予了协助。

但是，商会也观察到由于上市后监管人员的缺口较大，现在的监管人员队伍的专业性有待进一步提升，尤其是2017年各级各类法规的频繁出台和尚需摸索和进一步摸索的实施细则，给监管人员的执法和法规学习能力带来了挑战。

为解决这些以及相关问题，商会会员建议：从“重审评、轻监管”转向“上市前、上市后同重视”并逐步实现产品全生命周期管理的过程中。同时也需要考虑到执法的性质和行业的实际情况，并遵循不影响医疗器械产品安全有效性这一根本原则，以鼓励企业发挥其自身的主观能动性。这也能使企业自身的质量管理去落实质量体系 and 法规要求，而不需要进行统一僵化的执法。有些极端情况像出现要求企业在短期内满足实现和第三方之间必须有数据实时传输、或者从生产到运输到经销的过程中，温控必须在某一个特定值之下的法律法规。其他相关的法律规定同样不切实际但在此不赘述。

## 医疗器械的集中采购与招标

2017年10月召开的中国共产党第十九次全国代表大会的报告指出了实施健康中国的战略目标。需要努力完善国民健康政策，提供全方位全周期健康服务，满足人民日益增长的美好生活需要，解决医疗服务不平衡不充分的问题。

商会非常高兴地看到报告指出中国将继续实施开放策略，强调“一带一路”倡议作为提升中国全球参与度的手段的重要性。基于商会对报告的理解，对推进“健康中国发展战略”和满足中国人民的健康需求，提出商会的问题和建议。商会会员希望相关政策决策者本着促进中国医疗

with the updated overseas standards, but they often fail to comply with previous standards, especially in the case of electrical products. Therefore, AmCham China suggests that mandatory standards not be issued for the medical device industry and all standards should instead be recommended, so as to allow the industry to develop freely and make continuous product innovations.

Standards play a role in providing technical guidance on products. When an upgraded standard emerges, enterprises should be given a reasonable and clearly defined transitional period to complete the upgrading of products. According to the explanation by the NPC's Legislative Affairs Committee, there is a transitional period between the issuance and implementation of the new standard, during which both the new and old standards are valid. Products complying with either standard shall be deemed eligible products. AmCham China hopes that the medical device industry understands how to address this overlap in alignment with the NPC's Legislative Affairs Committee.

### *Post-Market Supervision*

The CFDA has continued to increase the number and quality of medical device quality announcements each year. It has issued regulations on operation and management of medical devices, compliance examination of medical equipment clinical trial data, and post-market supervision and inspection. Meanwhile, the CFDA has also conducted unannounced inspections, held special inspections, and instituted a series of quality improvement measures for enterprises whose products have encountered quality problems. In addition, the CFDA has helped to increase legal awareness, responsibility, and quality standards of applicants, manufacturing enterprises, and clinical trial facilities.

However, AmCham China also observes that due to a large gap in the post-listing supervisory staff, the professionalism of the current supervisory staff needs to be improved further. In particular, the frequent promulgation and implementation of various laws and regulations at all levels in 2017 challenged the law enforcement ability and regulatory learning skills of supervisory personnel.

To address these and related problems our members suggest directing the process of "value re-evaluation and light supervision" toward "pay equal attention to pre-listing and post-listing" and implementing the gradual realization of product full life cycle management. It is also necessary to take into account the nature of law enforcement and the actual conditions of the industry, while also upholding the fundamental principle of not affecting the medical device products' safety and effectiveness, in order to encourage enterprises to give full play to their own subjective initiative. This would also allow the implementation of quality system and regulatory requirements through their own quality management, rather than through uniform and rigid enforcement. In some extreme cases, enterprises are required to realize real-time

data transfer with the third party in the short term, or to maintain temperature control during production, transport and distribution at a certain value. Other laws and regulations are similarly impractical.

### *Centralized Purchase and Tendering*

The report of the 19th National Congress of the Communist Party of China held in October 2017 outlined the objective to implement a strategy for a healthy China. Efforts are to be made to improve national health policy, provide all-round and full-cycle health services, meet the people's growing needs for a better life, and solve the problem of inadequate and imbalanced medical services.

AmCham China was encouraged to see that the report stated that China would continue to open up and emphasized the importance of the Belt and Road Initiative as a means of promoting China's global engagement. Based on our understanding of the report, we have proposed our questions and suggestions related to promoting the "healthy China development strategy" and the health needs of the Chinese people. Our members hope relevant policy makers can more quickly resolve the contradiction with unbalanced and inadequate medical allocation in line with the principle of promoting the balanced development of China's healthcare industry.

On March 11, 2017, Li Bin, Minister of the NHFPC, addressed a press conference of the Two Sessions. She said the government would pilot the national price negotiations on high-value medical consumables and reduce the price of medicines and consumables. On September 9, 2017, the NHFPC issued the "Notice on Carrying out the Enterprise Declaration Work of National High-value Medical Consumables Price Negotiation" (Notice), officially launching this work. We have proposed the following suggestions:

- High-value consumables negotiations should be open and transparent. The "Notice on Printing and Distributing the Work of Centralized Procurement of High-value Medical Consumables (Trial), Article 27" stipulates a centralized purchasing work plan and centralized purchasing documents should openly ask for opinions. The national negotiation announcements and all the supporting documents for the national negotiations are to be released, and professional agencies and enterprises should be given time and channels for feedback and communication. State negotiating projects should also be implemented after considering and investigating relevant opinions.
- The State Negotiating Group for High Value Consumables should publish all negotiation rules and solicit opinions from all parties, to enable enterprises to better respond to and cooperate with the related work with a full understanding of policies.
- Systematically consider the policy factors of price differences between countries or regions and conduct nego-

健康产业平衡发展的原则，加快解决医疗配置不平衡不充分的矛盾。

2017年3月11日，国家卫生计生委李斌部长在两会新闻发布会上表示，政府要对高值医用耗材开展国家价格谈判试点工作，降低药、耗虚高价格。2017年9月9日，国家卫生计生委发布了《关于开展国家高值医用耗材价格谈判企业申报工作的通知》，正式启动了该项工作。商会提出以下建议：

- 高值耗材谈判工作应该公开透明。《关于印发高值医用耗材集中采购工作规范（试行）的通知》中第二十七条规定：制订集中采购工作方案和集中采购文件等应公开征求意见；应发布国家谈判公告和国家谈判全部配套文件，应给予专业机构和企业反馈和沟通的时间和渠道。国家谈判项目应在考虑和调研相关意见之后实施。
- 国家高值耗材谈判组应公布全部谈判规则，并征求各方意见，以便企业在全面了解政策的情况下，更好地响应和配合相关工作。
- 系统考虑国际或地区间价格差异的政策因素并根据中国的环境开展谈判。例如在德国，企业与相应机构只需谈判产品的价格和用量即可，而无需负责医技人员的培训、回款、随访和服务，企业运营成本相对较低，终端价格与其它国家不同。香港地区也没有产品注册的法规要求，其产品上市时间快，从而降低市场准入费用，导致其终端价格不同。
- 改善产品资质信息的科学评估。医疗器械的临床效果评估采取在最高等级评估后对多中心临床试验进行元分析的方法。临床试验报告已经成为各国政府市场准人的参考依据。植入性耗材的安全性和有效性评价应该以上市后多年的临床试验结果作为循证医学证据进行比较，主观评论、意见或实验室报告证据等级较低，结果难以令人信服。另外，中国专利分为发明专利、实用新型专利和外观设计专利，其中发明专利的技术含量最高。商会建议，在对产品申报资格进行评估时，应区分不同级别的临床证据，给予发明专利更大的权重。
- 协调国家高值耗材谈判与各地医用耗材集中采购的相关工作。2017年同期开展的高值耗材采购项目的地区包括京津冀、西部地区和部分市标等，涉及的采购产品类别与国家谈判有所重复。为进一步减轻政府与企业

业负担，中央与地方相关部门能够统筹协调，避免重复性工作。

- 改善设备招标。目前政府提倡基层首诊，建立上下联动机制，使得基层的社区卫生服务中心和乡镇卫生院成为重要的市场增长点。政府鼓励集中采购，然而在实际操作过程中，很多企业采用低价竞标的方式中标。商会建议政府，将基层社区分档次进行招标，比如：中心社区卫生服务中心和普通社区卫生服务中心应招标不同价位的产品。建议在每个档次都分成多个包进行招标，从而降低整体采购风险。

### “两票制”

术前备货、术中跟台、术后技术服务是医疗器械行业销售过程不可或缺的一部分。医疗器械生产企业有不同的销售模式，流通企业承担着大量的售前、售后服务职能。特别是全产品周期的服务需要人力和物力投入到术后的随访，生产厂家有限的人力和渠道是无法覆盖的，也需要通过医疗器械流通企业延伸售后服务。

目前医疗器械行业产品种类繁多复杂，然而生产企业对代理商的资质、售后服务的技术水平和人员能力要求差异较大，因此只用几家代理商不足以提供专业化、个性化的售后服务。

医疗器械使用数量少，规格、型号的个性化较大，医疗机构无法实现批量采购，目前，医疗器械采购只通过少量、多次的订单式采购进行。按照“两票制”的规定，“生产、流通企业销售药品时，必须开具增值税专用发票或者增值税普通发票，税票上应列明销售药品的通用名称、规格、单位、数量、单价、金额等，不能全部列明的，应附上应税劳务清单。所销售药品还应附销售出库单，出库单上应包括药品名称、剂型和采购的其他物品”。这将增加生产企业、经销企业和医疗机构的工作量和管理成本。目前，中国绝大部分省市还没有建立医疗器械采购信息系统管理，不仅难以降低医疗器械的价格，反而增加产品在流通领域的成本。

城乡地区因经济发展、疾病谱、医疗技术服务水平和规模存在较大差异，如果严格推行“两票制”，生产企业的运营成本将要急剧上升，包括代理商管理、物流配送全产品型号备货、补货、退货和换货。

因此，商会建议应首先开展药品流程领域改革。“两票制”应按照药品分类管理，充分考虑市场供求关系、价

tiations in line with China's environment. For example, in Germany, enterprises and corresponding institutions only need to negotiate the price and dosage of products and are not responsible for the training of medical and technical personnel, payment, and follow-up visits and services. The business operating costs are relatively low, and the terminal price is different from other countries. Hong Kong also has no product registration requirements, and its products come to the market faster, resulting in lower market access costs and different terminal prices.

- Improve scientific evaluation of product qualification information. The evaluation of clinical effects of medical devices takes the meta-analysis of multi-center clinical trials after the highest level of evaluation. The clinical trial reports have become the reference for market access of governments in various countries. Evaluation of the safety and efficacy of implantable consumables should use clinical trials several years after being listed as evidence-based medical evidence. Subjective comments, opinions, or laboratory reports have low levels of evidence and the results are unconvincing. Furthermore, Chinese patents are divided into invention patents, utility model patents and design patents, of which invention patents have the highest technical content. AmCham China recommends that in the assessment of product declaration qualification, different levels of clinical evidence should be distinguished, with greater weight given to invention patents.
- Coordinate national negotiations of high-value consumables and the related work of centralized procurement of medical consumables in all regions. The areas of procurement of high-value consumables for the same period in 2017 include the Beijing-Tianjin-Hebei region, the western region and some municipal standards. The types of procurement products involved are subject to overlap with national negotiations. In order to further reduce the burden on the government and enterprises, the central and local authorities should coordinate to avoid duplication of effort.
- Improve equipment bidding. At present, the government advocates grassroots initial diagnosis, establishment of an upper and lower linkage mechanism, making the grassroots community health service centers and township hospitals an important market growth point. The government encourages centralized procurement. However, in practice, many companies use low-price bidding wars to win the bid. It is recommended that the government divide the grassroots communities into different grades to call for bids. For example, central community health service centers and ordinary community health service centers should bid for products at different prices. It is also recommended that each level be divided into multiple packages for bidding, thereby reducing the overall procurement risk.

## *Two-Invoice System*

Preoperative stocking, intraoperative operation and stage, and postoperative technical services are an indispensable part of medical device industry sales processes. Medical equipment manufacturing enterprises have different sales models, and distribution companies assume a large number of pre-sales and after-sales service functions. In particular, full product cycle service requires manpower and material resources in the postoperative follow-up, which the limited manpower and channels of manufacturers cannot cover, and also requires that medical equipment distribution companies extend after-sales service.

At present the medical device industry has a large variety of products, while manufacturers' requirements for agents' qualifications, after-sales service technical level and personnel capacity vary greatly. As a result, having only a few agents is not sufficient to provide professional and personalized after-sales service.

Medical devices are individually personalized in specifications and types because of their small quantities. Medical institutions cannot purchase in batches. Currently, medical device purchasing takes place only through a small number of orders and multiple purchases. According to regulations of the "two-invoice system," production and circulation enterprises must issue VAT invoices when selling pharmaceuticals and general VAT invoices for pharmaceutical products. The general name, specifications, units, quantities, unit prices, and amounts of drugs for sale are to be specified in the tax receipts. If all of the above contents cannot be listed, the list of taxable services should also be attached. The sold drugs should also be attached to the outgoing list, which should include the drug name, dosage form and other items purchased. This will lead to an increase in workload and management costs for manufacturing enterprises, distribution companies and medical institutions. Currently, the majority of provinces and municipalities in China have not yet established a management system for medical device purchasing information, making it difficult not only to reduce the price of medical devices, but has also led to increases in the cost of products in the distribution process.

Given the vast differences in the level and scale of economic development, disease spectrum and medical technology services across cities and rural areas, strict implementation of the "two-invoice system" means the operating costs of manufacturing enterprises will rise sharply, including agent management, logistics and distribution, all product models stocking, replenishment, returns, and replacement.

As such, AmCham China suggests that drug process should first be reformed. The "two-invoice system" should follow the classified management of medicines and take full account of market supply and demand, the law of value, law and market order, and implement this step by step and in an orderly fashion. The medical devices market has unique

值规律、法律约束、市场秩序多因素，分步骤、有序地实施。医疗器械市场具有独特的特征，其改革应该考虑药物试点的结果。

### 指定配送商

2017年有些省市要求挂网品种生产企业直接设立当地配送企业，或委托当地有资质的配送企业配送。然而，这种政府过渡干预政策违反了市场规律，又违当前国家政府简政放权的大方向，同时增加了配送企业垄断的可能。

商会建议政府指定当地的配送企业时，由生产企业按照配送企业资质要求和标准，自行确认配送企业。

商会会员希望中国相关主管部门以公正、公开、透明的方式行事，在符合中国贸易政策及世界贸易相关协议的基础上，努力进一步简政放权，建立标准化、规范化的医疗器械集中采购模式，搭建高效、科学的采购程序，既有助于监管，又能满足患者的医疗需求。

### 医疗器械的定价

关于医疗服务价格，落实《推进医疗服务价格改革的意见》成为各省的主要任务目标。国家发展改革委发布了《关于全面深化价格机制改革的意见》（发改价格〔2017〕1941号），优化医疗服务价格，加快新增医疗服务价格项目受理审核，扩大按病种、按服务单元收费的范围和数量。目前医疗服务价格改革继续采取“降价”方式、以“成本”而非价值与医疗质量为基础开展。对于医务人员的劳务价值，仅考虑了手术、护理科室的人员价值，而没有考虑医疗技术人员的劳务价值。此外，以主流方法一刀切的定价方式和检验类不区分方法学、手术类耗材打包收费等问题，也为各地带来许多能否有效服务于临床的担忧。

### 新增医疗服务价格

自国家发改委发布《关于加快新增医疗服务价格项目受理审核工作有关问题的通知》要求各地加快受理新增医疗服务价格项目申请以来，各地逐步开放新增医疗服务价格申请窗口，加速推动了医疗新技术的临床应用。

而各地目前承诺的地方医疗服务价格调整和新增，仍然主要以《全国医疗服务价格项目规范（2012年版）》为导向。由于该规范为2012年制定，很多新技术、新方法、新服务未被纳入，而且部分指导原则和机制已不再与医疗改革的当前问题相关。此外，各地新增医疗服务价格并不一致，服务开放时间也没有一定规律，部分省份新增医疗服务价

格开放时间比较短，医院没有充足时间准备相关证明资料。这意味着高效的技术和医疗器械无法获得临床使用。商会会员建议各地区定期对新增医疗服务项目开放接受和审查窗口，并延长申请的处理时间，以促进适当的新技术和服务的市场准入。

### 打包收费

《全国医疗服务价格项目规范（2012年版）》（《价格项目规范》（2012））要求“严格控制单独收费耗材的品种和数量”，限制耗材除外。甘肃、深圳等省市在制定新项目价格和进行医疗服务价格调整时，除严格限制耗材外都调低了价格，且仅能使用廉价或者技术较为基础的耗材。

2012版规范虽然统一了全国服务标准和编码，但却传达了严格的言外之意。从医疗实践的角度而言，规范更着重于严格的操作流程，而非病患的最佳治疗方案。一些针对特定病患或特定疾病所必需使用的器械没有被纳入单独的收费类别，还有医疗服务价格很容易被排除在外。在医疗服务评估机制不健全的情况下，一些医疗机构可能会因为经济原因，不愿意使用适宜高效的技术，甚至选择低价低质的产品。而目前在医疗服务项目采购决策时，部分地区仅使用低价或老旧医用耗材和技术，或仅考虑常规科室和用途。过低的价格将导致高效型和科技创新型医疗器械不被采用，从而可能延误治疗。

商会建议在制定医疗服务价格时，以服务患者为第一要务，强调疗效优先、价格合理的原则。《价格项目规范》（2012）应作为支付医疗服务的指南，而非严格的临床实践要求和计费依据。具有显著安全性、效用和效果的产品应单独收费，保障病患具有选择权。此外，建议在某些范围内对单独收费或提价等收费方法进行限制。

### 改变定价方法的有限进展

根据2012年版规范，“检验类项目价格不得区分试剂或方法，要充分考虑当地医疗机构主流检验方法和社会的成本承受能力等因素，从而鼓励适宜技术的使用”。目前，一些省份在制定医疗服务价格时不区分方法，仍然按照原有的定价方式。

该规定的提出旨在限制医疗服务提供者在相同检测项目不同试剂或方法间进行选择时可能的经济利益。然而，从医学角度分析，不同检验方法或试剂的灵敏度和特异度可能存在一定程度的不同，成本也存在差异。在疾病的不同阶段，临床医生使用不同的检验方法来判断病人的状况，



features, and its reform should take into account the results of pharmaceutical pilots.

### *Designated Distributors*

Some provinces and municipalities in 2017 required that the manufacturers directly set up local distribution enterprises or entrust qualified delivery enterprises in localities for distribution. However, this government transitional intervention policy is inconsistent with market discipline and is contrary to the national government's general direction of streamlining administration and devolving power to lower levels of government. It also increases the possibility of distribution monopolies.

AmCham China recommends that the government, when designating local delivery enterprises, allow the production enterprises to confirm the distribution enterprises on their own, in accordance with their qualification requirements and standards for delivery enterprises.

Our members hope that relevant Chinese authorities will act with fairness, openness and transparency, conforming to China's trade policies and relevant agreements on world trade, in efforts to further streamline administration and delegate power to lower levels, establish a standardized and centralized purchasing model for medical devices, and build an efficient and scientific procurement process, to not only help regulation but also meet the medical needs of patients.

### *Pricing of Medical Devices and the BMI Payment System*

Regarding the pricing of medical services, implementing the "Opinions on Promoting the Reform of Medical Services Prices" has become a major task in all provinces. The NDRC promulgated the "Opinions on Comprehensively Deepening the Reform of the Price Mechanism" (Fagai Price [2017] No. 1941), outlining efforts to optimize the price of medical services, speed the acceptance review of newly added medical services price items, and expand the range and quantity of charges according to diseases and service units. The medical service price reform currently continues to take "price cut," using "cost" rather than value and medical quality as the basis. Regarding the labor value of medical staff, it only considers the value of staff in the surgery and nursing departments and does not consider the value of medical technicians. Furthermore, the universal application of the mainstream pricing method and testing categories does not distinguish between methodologies and surgical consumables, packaging fees and other issues. This results in much concern around the country whether effective service can be provided in clinics.

### *New Medical Services Price*

Since the NDRC issued the "Notice on Relevant Issues of Accelerating the Examination and Acceptance of Newly Added Medical Services Price Items" and urged all regions

to speed the application for newly-added medical service price items, the application windows for newly added medical service prices has been gradually opened around the country, facilitating swifter clinical applications of new medical technologies.

However, the medical price adjustments and increases promised in various places are still mainly guided by the "National Medical Service Price Items Specification (2012 edition)." Since the specification was formulated in 2012, many new technologies, new methods and new services have not been incorporated, and some of the guiding principles and mechanisms are no longer relevant to current issues in medical reform. In addition, the newly added medical service prices in various places are inconsistent and the opening hours for service are uncertain. The opening hours of newly-added medical service in some provinces are relatively short, resulting in hospitals having insufficient time to prepare the relevant supporting materials. This means efficient technical and medical equipment fails to get clinical use. Our members therefore suggest all places periodically open acceptance and review windows for newly added medical service items and extend the processing time of applications to promote market access for suitable new technologies and services.

### *Packing Fees*

The "National Medical Services Price Items Specification (2012 edition)" outlines requirements to "strictly control the types and quantities of consumables that are charged separately" with the exception of limited consumables. When formulating prices of new items and adjusting medical service prices, Gansu, Shenzhen and other provinces and cities have set lower prices, with the exception of limited consumables, and can only use inexpensive or technologically basic consumables.

Although the 2012 edition specified unified national service standards and coding, it conveyed a harsh connotation. From a medical practice point of view, more emphasis has been placed on strict operational procedures rather than the best treatment for patients. Some devices necessary for some specific patients or illness are not included in a separate category of charges, and the price of medical services is not easily covered. In the case of inadequate medical service evaluation mechanisms, some medical institutions may be unwilling to use suitable and efficient technologies for financial reasons and may even opt for lower-cost but also lower-quality products. At present, some regions only use low priced or old medical consumables, or only consider routine departments and purposes when making purchasing decisions on medical service items. If the price is too low, innovative technologies and highly efficient medical devices will not be used and this may lead to delays in treatment.

AmCham China recommends that serving patients be the top priority when setting the price of medical services, alongside strengthening curative effects and offering reasonable pricing.

如早期诊断、疾病治疗和康复进展的监测。先进的方法学能够提供高特异性和高敏感性，从而帮助医生更准确地诊断疾病，为调整或停止治疗提供依据，这是单一的“主流”检验方法所无法做到的。因此，商会促请政府有关部门考虑将更多先进、灵敏和特定的检测方法纳入新一版规范，特殊情况下允许差别计费。

### 医疗服务价格调整

相关国家公立医院改革政策提出要“降低自动化程度高的大型医用设备检查、检验价格，提高体现医务人员劳动价值的医疗服务项目价格”。目前，部分省市已出台相关文件，对大型医用设备检查和治疗价格，以及检验价格进行总体下调。自动化程度提高的主要目的不是降低检查成本，而是降低提高诊疗效率，减轻医务人员工作负担，降低患者等候时间，使患者及早获得诊断和治疗。医院影像检查和检验科工作量随着患者诊疗人次数的增加逐年增加，而医务人员并没有相应增加，因此有必要提高诊疗效率，以解决待检项目的积压。

此外，自动化程度高的大型设备检查不仅需要专业的医生开展，还要求进行设备维护。临床培训和技术支持和设备保养等都是保证医疗服务项目的顺利开展必不可少的。为了提高工作效率，并进一步提高检查准确性，医疗机构还配备了如自动读码器、自动审核系统、信息管理系统等硬件和软件。上述工作都需要资金、人力资源、时间等的投入，但在评估医疗服务定价时没有被考虑在内。

随着中国社会经济的不断发展，各种原材料价格和人力资源成本以及医疗服务成本也有所增加，因此，商会建议制定医疗服务价格调整时，应考虑某些因素，考虑大型设备检查和检验的人力成本、技术成本等间接成本和无形成本。建议开展成本相关测算的研究，建立科学的测算方法，合理地调整医疗服务价格。

## 药品

商会赞赏 2017 年中国政府在改善公众健康方面所做的努力，以及在加快药品审评审批、鼓励创新方面所取得的重大进展。这些进展包括，出台了一系列纲领性及指南性文件，启动了《药品管理法》和《药品注册管理办法》修正案征求意见；努力加快药品审评审批速度，批准了一大批品种上市；提出了新的制度倡议，例如数据保护，专利链接以及专利延长，以及其他保护知识产权的努力。

2017 年 2 月 14 日，国务院印发了《“十三五”国家药品安全规划》，旨在改善药品审评审批制度，鼓励创新，加快推进仿制药质量和疗效的一致性评价；基于对该规划落实两年来的评价，国家食品药品监督管理总局于 2017 年 8 月 25 日发布了关于仿制药质量和疗效一致性评价工作有关事项的公告（第 100 号文件）为改善仿制药质量和疗效的一致性评价提出了具体全面的要求；2017 年 10 月 9 日，党办公厅和国务院办公厅联合发布了《关于深化审评审批制度改革鼓励药品医疗器械创新的意见》，反映了中国制药行业在促进创新和发展方面做出的巨大努力，以使国家具有国际竞争力，从而加强对公共健康的保护。这些政策旨在确保中国患者及时得到更加安全有效的药物治疗。

具体的进展包括以下内容：

- 临床试验机构由过去的审批制改为备案制，明确临床试验申请的审评审批期限为 60 天，将伦理委员会的审批前置于 CFDA 对临床试验申请的审批。该措施可缩短临床试验的时间约 6 个月。
- 临床试验申请由三报三批改为两报两批，有条件接受企业在境外取得的临床试验数据。该措施可缩短产品上市时间 1-2 年。
- 首次在国家层面提出履行 WTO 关于知识产权保护的承诺，以便对创新药、改良型新药临床试验取得的安全性数据和其他数据，给予一定的保护期；仿制药申请人申报药品上市时，要对相关专利权属状态作出公开声明；实施药品专利期限补偿制度试点等。

### 现存监管问题

目前的药品分类将进口药与其它国产药区别对待，不符合中国更广泛的国际承诺。目前在新产品注册审批过程中，产品抽验和现场核查的标准和时限不清晰。

数据保护、专利链接和专利延长的具体要求不明确。

- 特别是伦理委员会的工作流程和审批期限不清晰。
- 作为开展仿制药质量和疗效一致性评价参比制剂的原研产品，其在招标过程中的地位有待明确。

此外，缺乏创新药品（包括化学药品和生物制品）进入医保目录的动态调整机制，目前使患者无法及时得到最新最有效的治疗。

此外，上市许可持有人制度不包含进口药品的新药申请。

The “Charge Code Specification (2012)” should be taken as a guide to pay for medical services rather than a strict clinical practice requirements and basis for billing. Products with significant safety, utility, and effectiveness should be charged separately to ensure patients’ right of choice. It is also recommended that a limit be put on charging methods such as separate charges or price increases within certain ranges.

### *Limited Progress in Changing of Pricing Methods*

According to the 2012 edition specification, “the price of test items shall not distinguish between reagents or methods and shall give full consideration to mainstream local testing methods, societal capacity to bear costs and other factors, thereby encouraging the use of appropriate technology.” At present, some provinces do not distinguish methods in determining the prices of medical services and have retained the original pricing methods.

The proposed regulation is intended to limit possible economic benefits for medical providers when choosing between different reagents or methods for the same test. However, from a medical point of view, the sensitivity and specificity of different test methods or reagents may vary to some extent, and costs also differ. At different stages of the disease, clinicians use different tests to determine the patient's conditions, such as early diagnosis or monitoring disease treatment and the progress of rehabilitation. Advanced methodologies can provide high specificity and sensitivity to help physicians diagnose diseases more accurately and provide the basis for adjusting or stopping treatment, which is something a single “mainstream” test cannot do. AmCham China therefore urges the relevant government departments to consider introducing more advanced, sensitive and specific detection methods into the new version of the standard and allow for differential billing under special circumstances.

### *Medical Service Price Adjustment*

Relevant national public hospital reform policies propose to “reduce the inspection and testing prices of large medical equipment with high degree of automation, and increase the prices of medical service items that can reflect the labor value of medical staff”. At present, some provinces and cities have issued relevant documents to generally reduce the inspection, treatment and testing prices of large-scale medical equipment. The main purpose of improving the degree of automation is not to reduce the cost of examination, but to improve the efficiency of diagnosis and treatment, reduce the workload of medical staff, reduce patient waiting times and enable patients to obtain diagnosis and treatment as soon as possible. The workload of hospital imaging examination and inspection departments has expanded year by year with increases in the number of patients, but the number of medical staff has not gone up accordingly. It is therefore necessary to increase the efficiency of diagnosis and medical treatment to address the backlog of items to be examined.

In addition, inspection by large equipment with a high degree of automation requires not only professional doctors to carry it out, but also requires equipment maintenance. Clinical training and technical support and equipment maintenance are all necessary to ensure the smooth development of medical service items. In order to improve work efficiency and improve the accuracy of inspection, medical institutions are also equipped with hardware and software, such as automated code readers, automated audit systems, and information management systems. The above work requires capital, human resources, time and other inputs, but are not considered when assessing costs for price-setting in medical services.

As China’s social economy continues to develop, the prices of various raw materials and the cost of human resources have also increased, as well as the cost of medical services. Therefore, we recommend that certain factors be considered when making medical service price adjustments, such as manpower, technical and other indirect costs, as well as the intangible costs of large-scale equipment inspection and examination. It is also recommended that research on cost-related calculations be conducted in order to establish scientific measurement methods and reasonably adjust the price of medical services.

## Pharmaceuticals

AmCham China commends the efforts by the Chinese government to improve public health in 2017 and the significant progress made in speeding drug approval and encouraging innovation. These developments include the promulgation of a series of programmatic and guiding documents, the launch of the “Drug Administration Law” and “Provisions for Drug Registration” amendment. There have been efforts to speed drug review and approval and a number of priority review and approval varieties have appeared on the market. New institutional initiatives have also been proposed like data protection, patent linkage, patent extension and other efforts for the protection of intellectual property.

On February 14, 2017, the State Council issued the “13th Five-Year Plan for National Drug Safety Planning”. This aims to improve the review and approval system for drugs, encourage innovation, and accelerate the consistency assessment of the quality and efficacy of generic drugs. Based on the assessment of the first two years of the practice, the CFDA published notice of the consistency assessment of the quality and efficacy of generic drugs (Document No. 100) on August 25, 2017, proposing specific and comprehensive requirements for improving consistency assessment of the quality and efficacy of generic drugs. On October 9, 2017, the Party General Office and the General Office of the State Council jointly issued the “Opinions on Deepening the Review and Approval System Reform and Encouraging Innovations in Pharmaceuticals and Medical Devices.” This reflects strong

## 药品招标采购

目前，在多数公立医疗机构省级药品集中招标采购中都将获得全国最低价作为目标。

然而在现有的省级采购中并没有实际的量价关系。这种在招标中寻求最低价格的行为，往往会导致高值产品，通常是那些与其仿制品相比不具价格优势的专利过期原研药物就此不再参与招标。如果“唯低价是取”越过确保药品质量的成本投入成为招标采购中最终唯一的决定因素，这不仅会限制医生的治疗选择，也会阻碍患者获得高质量药物，进而可能使患者面临安全风险。

商会非常高兴地看到中国政府为开展仿制药质量和疗效一致性评价所做出的努力，商会会员鼓励继续坚持保留在现有多数省级招标采购中的质量设定，从而在最终竞标中将原研药和仿制药区分开来。除此之外，确保专利过期原研药物的患者可及性也是同等重要的。然而，根据国际经验，现阶段仿制药质量和疗效一致性评价的结果尚不足以支持开展完全的仿制药替代。

商会希望建立一个与实际量价挂钩的药品采购机制，并允许药品供应方能主要基于业务考虑提出竞标价格。同时，其它地方也不应在没有参考采购量的情况下，将如此获得的最终采购价格直接用做价格参照。通过公平的市场竞争实现价格交易，避免不必要的行政干预，这与中国药品价格改革的目标完全契合。

另一个在药品采购中凸显的问题，是所谓“二次议价”，即医疗机构在本地招标结果基础上进一步谈判降低价格，以获得利润。关于此类行为，目前中央和地方政策都有些含糊和不明确之处，这进一步导致了混乱和医疗机构在最终药品采购中惟利是图，做出不公正的选择。

商会建议中国政府继续在各层面调整现行招标采购模式以确保通过公平竞争，令患者获得质量和疗效都合格的高质量药物，而不要将医生和患者的用药选择仅局限于那些价格最低但缺乏切实疗效保障的药物。以下是商会会员希望政府在调整相关政策和举措方面的一些具体建议：

- 建立公开透明的招标采购规则，以符合国际公认标准的条件，改进省级集中招标采购中的质量层次设定，并确保在最终采购中在最高质量层级内选择两个以上的中标产品。
- 加快推进落实党中央、国务院《关于药品和医疗器械创新的意见》，特别是促进医疗机构为患者提供创新、

高价值药物的可见性。

- 切实落实国家公平竞争审查制度，认真审核现有药品采购当地相关规定，以消除任何地方保护、限制公平竞争的内容。
- 基于患者安全的考虑，避免仓促出台仿制药替代的行政要求。

## 美中医疗卫生合作项目

美中医疗卫生合作项目是旨在加强中美两国和行业在医疗卫生领域合作的项目。该项目自启动以来与相关行业协会保持密切合作，支持中国政府实现提高病患获得优质医疗服务的能力的目标。

2017年，美中医疗卫生合作项目在“国际患者日”在北京、杭州及珠海开展新的系列活动。这些活动由美国商务部启动，其目的是通过创新救助病患的生命。此外，项目还在上海市及浙江省举行了美中医疗卫生合作研讨会。

美中医疗卫生合作项目联合美国贸易发展署、芝加哥大学、耶鲁大学和匹兹堡大学医学中心为赴美考察的国家卫计委、国家食药监局官员和医院领导组织了三次高级管理人员培训。各方很高兴看到这类培训增进了彼此的相互了解。美中医疗卫生合作项目希望和中国政府合作推动进一步的沟通。另外，在中美人文交流项目下，还开展了以转化医学、医院管理及医疗信息化为主题的研讨活动。

## 建议

### 对中国政府：

#### 医疗服务

- 为外资医疗机构设定优惠税率，并允许管理公司合并医疗中心的帐户用于报税。
- 取消私营医疗企业外资所有权的上限，并鼓励而不是限制医疗机构的外商投资。
- 允许医保覆盖私立医院，并按公立医院允许的最高金额给病人报销；另外，提高医疗保险费的个人所得税扣除限额。

efforts to promote innovation and development in China's pharmaceuticals industry, to make the country internationally competitive and so increase the protection of public health. These policies are to ensure timely and safer drug treatment for Chinese patients.

Specific progress includes the following:

- Change of clinical trial institutions from an approval system to a record filing system, clarifying that the clinical trial application review and approval deadline is 60 days, and putting the Ethics Committee's approval before the CFDA's approval of clinical trial applications. This measure can shorten the clinical trial time by about 6 months.
- The clinical trial application changed from three submissions and three approvals to two submissions and two approvals, with the condition of accepting the clinical trial data obtained overseas by enterprises. This measure can shorten the time to market by 1-2 years.
- For the first time, at the national level, it was proposed that WTO commitments be met in relation to intellectual property protection, in order to grant a certain protection period for the safety and data obtained from clinical trials of innovative drugs and modified new drugs. In applications for a drug's introduction to the market, generic drug applicants shall make a public statement about relevant patent ownership status and conduct a drug patent term compensation system pilot.

### *Ongoing Regulatory Issues*

The current drug classification treats imported drugs and other domestic drugs differently, which is not in line with China's broader international commitments. There is currently a lack of clarity regarding the standards for product sampling, on-site inspection, and time limits during the process of examination and approval of new product registration.

The specific requirements for data protection, patent linkage and patent extension are not clear.

- Particularly, there is a lack of clarity regarding the Ethics Committee's workflow and approval deadlines.
- The position in the bidding process of original research product, as a reference to launch consistency assessment of the quality and efficacy of generic drugs, needs to be clarified.

Moreover, there is a lack of a dynamic adjustment mechanism for the entry of innovative medicines (including chemicals and biological products) into medical insurance catalogs, which currently leaves patients unable to receive the latest and most effective treatment promptly.

Furthermore, the listing license holder system does not include new drug applications for imported drugs.

### *Drug Tendering*

Currently, aiming for the lowest national-level price dominates expectations in most provincial centralized drug tendering-bidding procurements for public medical institutions.

However, actual volume linkage in those provincial procurements is still not available. Such lowest-price focused bidding may therefore often lead to the absence of high-value drugs, usually off-patent originators, which in general lack a price advantage in relation to other generic drugs with the same chemical name. If the lowest price becomes the final decisive factor over necessary quality assurance cost in drug manufacturing, it will not only limit physicians' choice in treatment, but also hamper patients' access to quality drugs, leading to patient safety risks.

AmCham China was encouraged by the efforts of the Chinese government to move to quality and efficacy equivalence assessment for generic drugs. Our members encourage the strict maintenance of current quality setting in many provincial procurements which differentiates between originators and generic drugs in final bidding. In addition, ensuring the availability and access of off-patent originators is equally important for patients. Nevertheless, the results of current generic drugs' quality and efficacy equivalence assessment is still insufficient for full generic replacement as per international practice.

AmCham China hopes that a real price-volume linked drug procurement will be established to allow drug providers to bid with price offers that are mainly based on business considerations. Such final procured price should not be used as direct reference in other locations if its volume base is ignored. This would be fully in alignment with China's drug pricing reform goal, namely to achieve price deals via fair market competition and avoid unnecessary administrative intervention.

Another emergent issue in drug procurement is the so-called "2nd round negotiation," whereby medical institutions try to negotiate prices down from local bidding outcomes for further profits. There are certain policy ambiguities both at central and local level regarding these kinds of approaches, which result in more confusion and unfair, profit-driven decisions by medical institutions in their final drug procurement selections.

We recommend that the Chinese government further adjust the current tender-bid procurement model at all levels to ensure patients' access to high-quality drugs through fair competition among all quality and efficacy qualified drugs, instead of limiting physicians and patients' choice to only the cheapest drugs without any sound quality and efficacy assurance. The following are some specific measures our members would like the government to take into consideration while refining related policies and practices:

- Establish open and transparent tendering rules, and improve current quality layer setting in provincial procurements using internationally accepted standards,

## **药品**

- 建议将进口药品同国产药品一样，按照创新程度进行分类。
- 明确数据保护、专利链接和专利延长的具体要求，例如专利的分类；如何解决专利争端，确定时限，遵守专利法和明确包含生物制品，保护知识产权，鼓励创新。
- 明确伦理委员会的工作流程和审批时限，提高伦理审查效率。
- 明确参比制剂在招标过程中的原研地位。
- 建立将新药纳入医保目录的灵活调整机制。
- 许可持有人制度在制定中应明确指出具有充分安全性和有效性数据的进口药品和国产药品申请均应被视为新药申请。

## **医疗设备**

- 进一步调整当前各级招标采购模式，以确保患者通过所有质量和疗效合格的药品的公平竞争获得高质量药物。
- 通过允许推荐医疗设备标准，而不是强制要求来促进行业创新。
- 在确定医疗服务价格时，确保服务患者是重中之重，同时加强疗效并合理定价。
- 如本章所述，考虑落实《关于开展国家高值医用耗材价格谈判企业申报工作的通知》的建议。
- 在指定本地配送企业时，允许生产企业根据配送企业的资质要求和标准自行确认配送企业。

and allow at least two winners in the highest quality layer.

- Advance the implementation of the recent Central Committee and State Council “Opinion on Drug and Medical Device Innovation”, particularly regarding promoting the visibility of innovative, high value drugs access in medical institutions for patients.
- Fulfill the requirements of China’s fair competition review system by reviewing all current drug procurements related to local regulations in order to remove any local protectionist content that may restrain fair competition.
- Avoid a rushed administrative decision for generic replacement in procurement to protect patients’ safety.

## US-China Healthcare Cooperation Program

The US-China Healthcare Cooperation Program (HCP), a collaborative initiative for strengthening relations between the US and Chinese governments and industry in the healthcare sector, has worked closely with industry associations and supported the Chinese government’s goal of enhancing patient access to healthcare services.

In 2017, the HCP began a new series of events on International Patient Day in Beijing, Hangzhou and Zhuhai. The purpose of the activities, initiated by the US Department of Commerce (DOC), is to promote saving patients’ lives through innovation. In addition, HCP organized a U.S.-China Healthcare Cooperation Symposium in Shanghai and Zhejiang.

The HCP has worked with the US Trade and Development Agency (USTDA), University of Chicago Medical Center, Yale University, and University of Pittsburgh Medical Center (UPMC) to organize three senior executive trainings for Chinese officials from the NHFPC and CFDA and hospital leaders to travel to the US. All parties have been pleased to see the improvements in mutual understanding through these trainings, and the HCP hopes to cooperate with the Chinese government to facilitate further communication. Furthermore, topics including translational medicine, leadership development, and healthcare IT have been discussed in workshops as part of the US-China People-to-People Exchange initiative.

## Recommendations

### *For the Chinese Government:*

#### Healthcare Services

- **Set a preferential tax rate for foreign-invested medical institutions and allow management companies to consolidate the accounts of their medical centers for tax reporting purposes.**
- Remove caps on the foreign ownership of private

healthcare enterprises and encourage, rather than restrict, foreign investment in medical institutions.

- Allow BMI to cover private hospitals and reimburse patients for the maximum amount allowed in public hospitals; additionally, raise the ceiling on individual income tax deductions for health insurance premiums.

### Pharmaceuticals

- Imported drugs, like domestic drugs, should be classified according to their level of innovation.
- Define the specific requirements for data protection, patent linkage and patent extension, such as the classification of patents, how to resolve patent disputes, decide on time limits, comply with the Patent Law and expressly include biological products to protect intellectual property and encourage innovation.
- Clarify the Ethics Committee’s work processes and approval deadlines and improve the efficiency of ethics review.
- Clarify the original research status of reference preparations in the bidding process.
- Establish a flexible adjustment mechanism for the inclusion of new drugs in the health insurance formulary.
- In arranging the license holder system, clarify that both imported drugs and domestic drugs with sufficient safety and efficacy data should be considered as new drug applications.

### Medical Devices

- Further adjust the current tender-bid procurement model at all levels to ensure patients’ access to high-quality drugs through fair competition among all quality and efficacy qualified drugs.
- Promote industry innovation by allowing medical device standards to be recommended rather than mandatory.
- Ensure that serving patients is the top priority when setting the price of medical services, alongside strengthening curative effects and offering reasonable pricing.
- Take into consideration the recommendations on implementing the “Notice on Carrying out the Enterprise Declaration Work of National High-value Medical Consumables Price Negotiation”, as outlined in this chapter.
- When designating local delivery enterprises, allow the production enterprises to confirm the distribution enterprises on their own, in accordance with their qualification requirements and standards for delivery enterprises.





# Information and Communications Technology and Cybersecurity

## Introduction

**A**mCham China urges a return to openness, stability and clarity in China’s policy environment for the Information and Communications Technology (ICT) sector. For decades, China’s prosperity and rise to international prominence has been built on policies of opening up to the outside world. However, recent trends toward restricting access amid uncertainty in the ICT sector indicates reluctance by China to maintain its commitment to such openness. This in turn contributes to negativity toward China’s investment environment in the US and elsewhere. Renewed commitments to openness would advance continuing prosperity for both the US and China, as well as good relations between the two countries.

From the perspective of US business, the ICT sector in China presents a dilemma. On the one hand, it is now one of the most dynamic sectors of China’s economy. On the other hand, it has arguably become the most difficult sector for foreign enterprises to navigate, especially as the policy environment has become more restricted and uncertain over the past year. This is most evident in the restriction of foreign access to China’s ICT market, which is a cause for concern. It not only foretells a future drop in foreign investment in China, but also less interaction by China with the outside world.

## Cybersecurity

China’s Cybersecurity Law has led to recent policy restrictiveness and uncertainty in the country’s ICT sector. Although the law was passed over a year ago, enterprises in China still have no clear idea of the law’s requirements. Many of the implementing regulations remain in draft form and are liable to change. In some cases, regulations have departed from or expanded the scope of the law itself through the addition of restrictions that never appeared in the original text. This has led to uncertainty among enterprises, as it is unclear where such expansion of the scope of the law will end.

AmCham China appreciates policy makers’ willingness to engage and consult with industry as part of efforts towards transparency. However, AmCham China members advise that all further rule-making adhere to the scope of the law as

stated in the text. More generally, AmCham China urges that further regulations adopt no discriminatory stances against foreign business, observe China’s World Trade Organization agreement on Technical Barriers to Trade (WTO/TBT) obligations, and adopt international approaches and perspectives, in order to take a cooperative approach towards China’s foreign economic relations. Finally, AmCham China recommends setting up accountability mechanisms and practices.

## Critical Information Infrastructure

The definition of “critical information infrastructure” (CII) has created much uncertainty. Significant ambiguities remain and the scope of the definition of CII remains too general in the July 2017 draft of the implementing regulations. Instead of addressing this, the July draft regulation broadened the application of the term and loosened its original connection to national security.

Moreover, the draft implementing regulations set out unsatisfactory security measures which CII operators must implement, as well as prescriptive requirements which CII operators must follow. These include procuring cybersecurity products meeting mandatory requirements of national standards, conducting cybersecurity reviews for important products or services, and placing restrictions on overseas maintenance. Such requirements are overly prescriptive, burdensome, and possibly ineffective, as they will not necessarily ensure the security of CII. AmCham China instead recommends using a narrowly designed, risk-based, flexible and lighter regulatory approach. This would allow organizations to demonstrate compliance by satisfying a recognized global, voluntary standards and internationally-accepted risk management methods adopted through a multi-stakeholder process. Such an approach would place enterprises in a better position to manage cybersecurity risks by offering these security measures more appropriate to their actual situations. For example, the measure would allow enterprises to address the specific risks they actually face, rather than prioritizing rote compliance with prescriptive standards and requirements.

Accordingly, AmCham China recommends that the definition of CII be redefined in clearer and more focused terms. The fundamental connection between CII and national security should be restored and emphasized above all. This is feasible given that the July 2017 draft implementing regu-

# 信息和通信技术以及网络安全

## 引言

**中** 国美国商会（商会）促请中国在通信技术行业建设开放，稳定和清晰的政策环境。几十年来，中国繁荣和崛起都是建立在开放的政策基础上的。然而，近期在不确定的信息和通信技术领域的准入限制表明中国不愿遵守公开的承诺。这反过来对中国向美国及其他国家的投资环境造成不利。重新承诺公开将有利于中美两国的持续发展与良好关系。

从美国业界的观点来看，中国的信息技术行业面临两难困境。一方面，它现在是中国经济最有活力的领域之一；另一方面，它可以说是为外企在中国最难驾驭的领域，尤其是去年政策环境变得越发受限，充满不确定。这一点明显的体现在限制外资进入中国的信息技术方面，令人十分担心。这不仅意味着外资在中国将会缩减，还意味着中国与外界的互动减少。

## 网络安全

中国《网络安全法》给中国信息和通信技术领域带来了政策的限制及不稳定。虽然该法律在一年前就已经通过，但中国的企业仍然不清楚该法律的很多具体要求。许多执行条例仍以草案形式存在，并有可能朝夕令改。在一些情况下，通过增加原文中从未有的限制，条例法规已经脱离或扩大了法律本身的范围。这给企业带来了不确定性，因为目前还不清楚法律范围将会扩大到何种程度。

商会赞赏政策制定者愿意让行业参与协商，努力提高透明度。但是，商会的会员企业建议，进一步制定的所有规则都必须遵守法律所述的范围。更普遍的是，我们建议进一步的法规应当对外国企业一视同仁，履行中国对世界贸易组织关于技术性贸易壁垒协定的义务，并以国际通行的方法和角度，采用合作的方式对待中国的对外经济关系。最后，商会提议建立问责机制，并付诸实施。

## 关键信息基础设施

“关键信息基础设施”（CII）的定义产生了许多不确定性。在 2017 年 7 月《关键信息基础设施安全保护条例》的征求意见稿中，关键信息基础设施仍然含糊不清且定义范围过于宽泛。该征求意见稿非但没有解决这个问题，反而扩大了该条款的适用范围，并过于宽泛地定义了其与国家安全之间的关联。

此外，该草案规定了关键信息基础设施经营者必须执行的安全措施，以及必须遵守的规定要求。然而这些措施并不尽人意：这些措施包括采购网络安全产品要满足国家强制标准的要求，对重要产品或服务进行网络安全审查，并限制境外维护。这些要求过于繁琐且低效，而且不一定能够保证关键信息基础设施的安全性。相反，商会建议采用针对性强、基于风险灵活的、宽松的监管方式。企业将因此能够通过达到全球认可的、自愿性的标准，以及采用多利益相关方认同的国际风险管理方法，来展现其合规性。采用这种方法，为企业提供更符合其实际情况的安全措施。这样一来，企业可以更好地管理网络安全风险。例如，该措施允许企业解决实际面临的具体风险，而不是按照规定标准和要求来确定合规重点。

因此，商会建议须更清晰严密地重新定义关键信息基础设施。首先要重新强调关键信息基础设施与国家安全存在根本联系。2017 年 7 月的实施条例草案提供了修订的可行性。根据草案，国家互联网信息办公室（CAC）将与行业监管机构联合制定确认关键信息基础设施的手册。行业监管机构随后将在各自领域内对关键信息基础设施进行实际识别。商会建议将这些识别方法作为确定特定信息基础设施是否是关键信息基础设施的决定性和唯一手段。

最后，商会促请明确关键信息基础设施运营者和“网络运营者”之间的区别。这一点至关重要因为《网络安全法》及其草案框架根据每一类别运营商制定了不同的规则。一旦被认定为关键信息基础设施运营商，企业应只遵守网络

lations offer the possibility for such a revision. According to the draft, the Cybersecurity Administration of China (CAC) will act in conjunction with industry regulators to formulate handbooks for the identification of CII. Industry regulators would then make actual identifications of CII within their respective fields. AmCham China recommends that these identifications be taken as the definitive and exclusive means for determining whether any particular information infrastructure is CII.

Finally, AmCham China urges that the distinction between operators of CII and “network operators” be clarified. This is crucial, given that the Cybersecurity Law and its draft framework provide different sets of rules for each set of operators. Once identified as a CII operator, an enterprise should be subject only to the cybersecurity requirements and cross-border transfer rules that apply to CII, and not to both sets of rules that apply to CII and to “network operators.”

### Data Localization

AmCham China’s view on data localization remains the same as stated last year in the *2017 White Paper*. AmCham China still maintains that data localization requirements are detrimental to the performance of global information services, overly burdensome for ICT companies, and expensive, technically challenging, and unnecessarily complicated without necessarily providing security for data on the Internet. As such, it would be advisable for China to drop this requirement.

However, a data localization requirement applicable to operators of CII is part of the Cybersecurity Law. If this requirement is retained, AmCham China members recommend instead that its impact be narrowed by providing a clearer definition regarding which installations of information infrastructure are CII, and not extended to all “network operators” without legal basis. A further measure may be needed to require that a complete set of all original information be retained within China, while allowing copies to be transmitted to other countries. This approach has been adopted elsewhere in the world.

### Cross-Border Data Flows and “Security Assessments”

In April 2017, a draft regulation was published on security assessments for cross-border transfers of personal information and “Important Data.” This draft presents a key example of an implementing regulation expanding the scope of obligations under the Cybersecurity Law beyond its original text. The Law originally imposed a cross-border data transfer restriction, but this applied only to operators of CII. Ordinary “network operators” were not subject to the restriction. However, the draft regulation imposed a new cross-border data transfer restriction on ordinary “network operators,” including obligations to obtain data subject consent for cross-border transfers of their Personal

Information, to pass a “security assessment” of the proposed transfer, and also to subject transfers of “Important Data” to a “security assessment.”

There are other examples of unnecessary expansion of the application of the Law. The text states (Article 2) that the Law applies to the construction, operation, maintenance and use of networks “within the territory of the People’s Republic of China.” However, in August 2017, a draft guideline was published regarding security assessments for cross-border transfers of data that would extend the application of the Law to enterprises operating networks outside of China.

In addition, “Important Data” was originally defined as a special category of information that only concerned operators of CII. However, the definition of “Important Data” has been expanded over time. A draft guideline on “security assessments” published in May 2017 included a long, unclear list of categories of information that would constitute “Important Data.” This has now made it impossible to understand with any logical consistency what kind of information falls within the scope of “Important Data.”

Although at the time of going to print the draft regulations had not been finalized, the basic framework for cross-border data transfers at this stage, including its lengthy administrative process and the breadth of the term “Important Data,” would overcomplicate even routine transfers of data necessary for valid business reasons. Many small and medium-size enterprises will be unable to bear this burden. It will also be problematic for regulators to administer it. The sheer number of cross-border data transfers that will be generated by the vast Chinese economy means that regulators will be unable to make efficient reviews or assessments of many data transfers.

It would therefore be better to abandon the proposed framework for cross-border transfer restrictions that would apply to ordinary “network operators.” This should include both the requirement to obtain the consent of data subjects for cross-border transfers, and the requirement to conduct “security assessments.” This would bring the extent of obligations back in line with the original text of the Law and thereby reduce some of the confusion and uncertainty created by the draft regulations. AmCham China proposes adopting instead a cross-border data transfer framework that is modeled, even if loosely, on the Asia-Pacific Economic Cooperation (APEC) Cross-Border Privacy Rules System. This system has been widely integrated across the world, including by the US, Japan, Canada, Mexico and South Korea. Furthermore, more countries are expected to join, including Australia, Singapore, and the Philippines. China should consider using a framework that is at least similar to this system, as it reflects a strong international norm that is emerging among China’s neighbors and most important trading partners. Adhering to such a system will benefit China, as it will encourage the establishment of data security accreditation agencies which would help promote awareness regarding cybersecurity.

安全要求和适用于关键信息基础设施的跨境转移规则，而不适用于关键信息基础设施和“网络运营者”的两套规则。

### **数据本地化**

商会对数据本地化的看法与2017年《白皮书》中的表述一致。商会仍然认为，数据本地化的要求不利于全球信息服务发展，给信息和通信技术企业造成过重负担，成本昂贵，技术上存在挑战，而且对于互联网上无须提供安全保障的数据来说过于复杂。因此，中国取消这一要求将会非常明智。

然而，《网络安全法》要求对关键信息基础设施运营者的数据进行本地化。如果保留这一要求，商会会员企业建议更清晰地定义哪些信息基础设施是关键信息基础设施，减小其影响，而不是在没有法律依据的情况下将其定义扩展至所有的“网络运营者”。而且需要采取进一步措施，在要求于中国境内保留一套完整原始信息的同时允许将信息的拷贝件传输到其他国家。世界其他地方已经采用这种方法。

### **跨境数据流动以及“安全评估”**

2017年4月，《关于跨境转移个人信息和“重要数据”的安全评估草案》发布。该草案是实施条例扩大《网络安全法》义务范围，超出其原始文本范围的关键例子。《网络安全法》最初限制跨境数据转移，但这只适用于关键信息基础设施的运营商。普通的“网络运营者”不受限制。然而，该草案对普通“网络运营者”规定了一项新的跨境数据转移限制，包括有义务获取数据主体同意才能跨境转移个人信息，针对跨境信息的“安全评估”，以及对“重要数据”进行“安全评估”。

还有其他一些不必要扩大法律适用范围例子。第二条规定本法适用于“中华人民共和国境内”的网络建设、运营、维护和使用。然而，2017年8月出台的关于跨境数据传输安全评估的指导意见草案，把法律适用范围扩展到中国以外的企业运营网络。例如，其中一项条款考虑将允许中国境外人员访问数据的行为视为跨境转移数据，即使这些数据不是通过电子方式或物理传输到境外。

此外，“重要数据”最初只定义为关键信息基础设施运营商关注的特殊信息类别。然而，随着时间的推移，“重要数据”的定义不断扩大范围。2017年5月发布的“安全评估”指南草案列出了一份较长但是界定不清晰的信息类别清单，称之为“重要数据”。商会难以理解“重要数据”

的定义范围是否逻辑一致。

虽然本条例草案尚未最终定稿，但当前的跨境数据转移基本框架由于行政程序的冗长和“重要数据”一词定义过于宽泛，导致因正当业务理由进行的常规数据转移变得过于复杂。许多中小企业无法承受这种负担。这对监管机构来说也是个问题。庞大的中国经济体会产生大量的跨境数据传输，这意味着监管机构将无法对许多数据传输进行有效地审查或评估。

因此，商会建议不应当将跨境转移限制框架适用于普通的“网络运营者”，包括获得跨境转移数据主体同意和进行“安全评估”的要求。这样才能够将合规义务与《网络安全法》原文保持一致，从而减少该条例草案所造成的混乱和不确定性。商会建议采用以相对宽松的亚太经合组织(APEC)的跨境隐私规则体系作为跨境数据传输框架的基础。该框架已在世界范围内得到广泛应用，包括美国、日本、加拿大、墨西哥和韩国。而且，预计将有更多的国家采用这一框架，包括澳大利亚、新加坡和菲律宾。中国应该考虑使用至少与这个体系类似的框架，因为这是在中国邻国和最重要贸易伙伴之间新兴、具有强大影响力的国际规范。遵守该规范也将使中国受益，其鼓励设立数据安全认证机构的方式将有助于提高对网络安全的认识。

然而，如果保留跨境数据转移限制和对“安全评估”的义务，商会强烈建议明确“重要数据”的定义，重新确定其与关键信息基础设施和国家安全之间密切、独有的联系。此外，我们的会员企业还建议，对于个人信息和“重要数据”的“安全评估”要求应当加以区分。只有转移与国家安全密切相关的“重要数据”才接受安全评估，而其他类别不应受“安全评估”的影响。

最后，“安全评估”不应该成为不必要的干扰，也不应该要求企业披露商业机密，比如源代码或专有客户列表。

### **网络安全分级保护计划**

《网络安全法》推出了网络安全等级保护计划(MLPS)，作为升级版的信息安全等级保护。信息安全等级保护制度最初是由公安部和其他监管机构于2007年推出的。根据可能对国家安全、经济稳定和社会秩序造成的潜在危害以及可能由于这些系统故障危害公共利益的危害对信息技术系统进行分类。将这种潜在的危害等级从低到高分级，如果有中等或更高风险，就要求使用“本地”知识产权(IP)。

However, if the cross-border data transfer restriction and obligation to conduct a “security assessment” are retained, AmCham China would strongly recommend that the definition of “Important Data” be clarified so that it regains its close and exclusive association with CII and national security. In addition, AmCham China members would also recommend that personal information and “Important Data” be considered separate requirements regarding “security assessments.” “Security assessments” should not be required for both at the same time. Only transfers of “Important Data” that are closely associated with national security and no other categories should be subject to a “security assessment.”

Finally, “security assessments” should not be unnecessarily intrusive, nor require enterprises to disclose trade secrets, such as a source code or proprietary customer lists.

### Cybersecurity Classified Protection Scheme

The Cybersecurity Law introduced the Cybersecurity Classified Protection Scheme (CCPS), an updated version of the Multi-Level Protection Scheme (MLPS). The MLPS was originally introduced by the Ministry of Public Security and other regulators in 2007. It classified IT systems according to the potential harm they could cause to national security, economic stability, and social order, as well as threats to the public interest that could result from failures in these systems. It ranked this potential danger by grading it from low to high and required use of “indigenous” intellectual property (IP) if a medium-level or higher risk was present.

The CCPS will now expand these requirements to cover not only information systems, but also cloud computing, big data, mobile internet, the Internet of Things and industrial control systems. The Cybersecurity Law has also officially broadened the scope of the CCPS by including all network operators within its framework, and requiring that their cybersecurity protection measures comply with its rules. This has begun a trend toward an excessively broad application of this scheme in commercial markets, and an expansion of the inherently discriminatory MLPS to exclude international vendors.

### Mandatory Requirements in Cybersecurity Measures and Standards

The new Cybersecurity Law stipulates that network products and services be tested and/or certified in line with the requirements of Chinese standards before entering the country. A new catalogue of critical network products and cybersecurity specific products released in 2017 officially set out market entry requirements, with retroactive effectiveness. This now affects technologies that previously had faced no market access barriers. It also was not notified to the WTO/TBT.

AmCham China urges that the cybersecurity measures comply with China’s WTO obligations, be announced to the WTO/TBT, and solicit interested stakeholders’ comments for 60 days. The pending implementing regulations and standards

for the new Cybersecurity Law should also allow foreign ICT hardware and software suppliers to seek qualification or certification of their products under security-related specifications that are compatible with international best practices.

### Commercial Encryption Regulation

In April 2017, China released a draft of the Encryption Law for public comment. The draft classifies cryptography into core, common, and commercial cryptography, and sets out import and export control mechanisms, as well as licensing regimes for providers of encryption products and services. It also includes the application of encryption products in CII and technical support for decryption, and decryption and encourages the development of national standards for encryption. Prior to the draft Encryption Law, encryption had mainly been regulated by the “Commercial Encryption Regulation” (Regulation), in effect since 1999.

AmCham China advises against regulation of widely available commercial encryption products, and classification of commercial encryptions as a state secret. AmCham China members also urge that the import of encryption products should not be regulated, and equal recognition be given to international algorithms. AmCham China also recommends that enterprises should not be required to obtain a license to import commercial encryption products and continue to urge that encryption products should not be required to undergo any testing or evaluation that requires the disclosure of a source code or intellectual property.

### Market Access

The updated “Telecommunications Services Classification Catalogue,” effective March 1, 2016, extends the scope of the telecommunications regulatory regime to include, in addition to Telecommunications and Internet services, emerging ICT services such as cloud computing, internet data center services, content distribution network services and more innovative services.

This development effectively makes these emerging services inaccessible to foreign investment. Foreign-invested enterprises (FIEs) already face severe challenges when competing in China’s information communications technology industry. These can take the form of investment restrictions, security controls and localization mandates. AmCham China urges that China’s telecommunications services sector be reformed so as to encourage innovation and the development of emerging industries, including liberalization of restrictions on foreign participation.

### Cloud Computing

In the US and EU, cloud computing is widely viewed as a computer-related service (CRS) as it represents an evolution in delivery methods that support information technology. However, in China, cloud computing is classified as a

网络安全等级保护计划将扩展这些要求的范围，使其不仅覆盖信息系统，还包括云计算、大数据、移动互联网、物联网和产业控制系统。《网络安全法》将 MLPS 扩展到其框架内所有的网络运营者，并要求实施的网络安全保护措施符合其规定。该方案的趋势是将适用范围过度扩张到商业市场，而网络安全等级保护计划内含的歧视性也会继续加剧排斥国际供应商。

### **网络安全措施和标准的强制性要求**

新《网络安全法》规定，网络产品和服务在进入中国之前必须按照中国标准的要求进行测试和或认证。2017 年发布的一份新关键网络产品和网络安全专项产品目录，正式提出了市场准入要求，且具有追溯效力。这对以前没有市场准入障碍的技术有所影响。该规定也没有告知世贸组织 / 技术性贸易壁垒 (WTO/TBT 协定)。

商会促请网络安全措施遵守中国的世贸组织义务，告知世贸组织 / 技术性贸易壁垒协定，并向利益相关方征求意见长达 60 天。新《网络安全法》的实施细则和标准还应允许外国信息通信技术硬件和软件供应商以与国际最佳实践一致的安全相关规范为基础获得其产品资格或认证。

### **商用密码管理条例**

2017 年 4 月，中国发布《密码法草案》以征求公众意见。草案将密码分类为核心、普通和商用密码商用密码，并制定了进出口管制机制，以及加密产品和服务供应商的许可制度。还包括加密产品在关键信息基础设施的应用和对解密的技术支持，并鼓励制定国家密码标准。在密码法草案之前，由 1999 年起生效的《商用密码管理条例》（以下简称“条例”）管理加密。

商会认为广泛存在的商用密码产品不应受到监管，商用密码不应归为国家机密。我们的成员还促请，不应该对加密产品的进口进行管制，并对国际算法给予同等的承认。商会还建议不应要求企业获得进口商用密码产品的许可证，并继续促请不要求密码产品进行任何要求披露源代码或知识产权的测试或评估。

### **市场准入**

修订版《电信业务分类目录》于 2016 年 3 月 1 日生效施行，扩大了中国电信监管体制的范围，除了电信和互联网服务，还将许多新兴信息和通信技术服务包含在内，例

如云计算、互联网数据中心服务和内容分发网络服务以及其他创新服务。

这相当于将外商投资排除在这些新兴服务之外。外资企业在中国信息和通信行业已经面临严峻的竞争挑战，如各种投资限制、安全控制、本地化要求等。商会促请中国改革电信服务行业，以鼓励新兴行业的创新和发展，包括放开对外商参与的限制。

### **云计算**

在美国和欧盟，云计算被广泛视为计算机相关服务，因为它代表了信息技术交付方式的演变。然而，中国《电信业务分类目录》却将云计算归为增值电信业务。目前，增值电信业务的外资股比不得超过 50%。外资企业除了与获得许可的内资企业合作外，是被禁止参与云计算服务的。外资参与云计算的方式被严格限制在技术许可范围内，不允许外国资本投入到云计算服务。安全相关标准和认证（包括新《网络安全法》的一些规定）以及严格的数据政策也限制了外资参与中国的云服务行业。

2016 年 12 月，工信和信息化部（“工信部”）发布了《关于规范云服务市场经营行为的通知（公开征求意见稿）》（“通知”）。该通知强化并扩大了对外企参与云服务的限制，损害了其在中国市场与内资企业公平开展竞争以及在合理条件下开展合作的能力。该通知的用词模糊，应用范围也不够清晰。

对外资参与云服务的这类限制将会限制中国国内市场的竞争，不利于中国引进新的技术和服务。长远来看，随着中国云服务业在国际市场逐渐直接与境外云服务供应商展开竞争，这些限制将会抑制中国企业的竞争力。相比之下，在海外投资（包括美国和其他主要西方市场）时，中国云服务运营商目前很少或没有受到此类限制。例如，中国的云计算服务供应商目前在不需许可证或外国合作伙伴的情况下可以在美国建立商业运营。

商会建议放宽对外资企业参与云服务和其他新型创新商业服务的外资持股比例限制、许可限制以及市场准入壁垒限制。商会会员也建议中国采用能够反映这一新兴行业的国际性和无国界性质的全球标准和政策。作为具体措施的第一步，商会建议将云计算重新归类，从增值电信业务类改为计算机相关服务，使得外资企业能够更加充分地参与云计算服务。

value-added telecommunications service (VATS) under the “Telecommunications Services Classification Catalogue.” Foreign investment in VATS is currently capped at 50 percent. In particular, FIEs and foreign capital are strongly prohibited in practice from participation in cloud computing, except through partnerships with licensed domestic companies. In practice, foreign capital is not permitted to be used for cloud computing services, and its role is strictly limited to technology licensing. Security-related standards and certifications (including some proposed in the Cybersecurity Law), as well as strict data policies, also limit foreign participation in cloud services in China.

The draft “Notice on Regulating Business Behaviors in the Cloud Services Market” (Notice), published for comment in December 2016, also reinforces and expands restrictions on engagement by FIEs in cloud services. It not only hinders their ability to compete on equal terms with domestic companies in the China market, but also to partner with Chinese companies on reasonable terms. The Notice also uses unclear terminology and is vague in its scope of application.

Restrictions of this kind on foreign participation in cloud services will limit competition in China’s domestic market and discourage the introduction of new technologies and services into China. In the longer term, these limitations will hinder the competitiveness of Chinese cloud services companies as they increasingly compete directly with foreign cloud service providers in international markets. In contrast, very few or no restrictions of this kind currently apply to Chinese cloud service operators when these invest abroad, including in the US and in other major Western markets. For instance, Chinese cloud computing service providers are currently allowed to establish commercial operations in the US without the need for either a license or foreign partner.

AmCham China recommends the loosening of foreign shareholding limitations, licensing restrictions, and market entry barriers to participation by FIEs in cloud services and other new, innovative business services in China. AmCham China members also recommend that China adopt global standards and policies that reflect the international and borderless nature of this emerging industry. As an initial step, AmCham China recommends changing the category of cloud computing from VATS to CRS, so that foreign enterprises can more actively participate in cloud computing services.

### Internet Service Regulations and Internet Controls

China continues to impose stricter Internet controls that create barriers for accessing the global Internet. Such restrictions impair the ability of both foreign and domestic companies to operate in a globalized economy. Internet information services are consistently categorized as VATS, effectively prohibiting foreign participation in these services. Since 2000, the “Internet Information Services Administrative Measures” have also imposed burdensome requirements and provisions on Internet service providers, including conditions concerning lawful access to national security, server localiza-

tion, data retention, data privacy, content filtering, and real-name identification registration. Generalized controls include censorship and arbitrary blocking of websites.

AmCham China members urge China to adopt a more relaxed regulatory framework for the Internet. A global, borderless, and market-driven approach is the only way to effectively manage the growth of the Internet while minimizing any impediments to its development.

### “Secure and Controllable” ICT

Several actions of the Chinese government, including the draft Measures to be promulgated under the Cybersecurity Law, promote the application of the “secure and controllable” standard to ICT. Efforts to do so are already apparent in the banking, telecommunications, medical devices, insurance, and semiconductor industries. Draft standards issued by the National Information Security Standardization Technical Committee (TC260) define “secure and controllable” ICT as that which involves issues such as source code review, data localization, restrictions on cross-border data flows, and supply chain assurance. Although these standards are adopting grading systems on the requirement indicators, they have given cause for concern to foreign ICT companies in China regarding the possibility of being put at a competitive disadvantage. Some have already encountered disadvantages, as local governments, banks, and insurers with whom they negotiate have sought to comply with the draft ICT standards as if they were already in effect.

AmCham China urges the Chinese government to develop cybersecurity policies using a more open and transparent process that takes industry input into account, while also implementing cybersecurity policies in a manner that is focused, non-discriminatory and takes international norms into account. In particular, AmCham China members urge TC260 to clarify the meaning of the term “secure and controllable” more precisely, as well as the objective metrics that must be met for a product or service to be deemed “secure and controllable.” Moreover, the “secure and controllable” standard should not include or imply a requirement to procure ICT equipment of exclusively domestic design or manufacture. Furthermore, AmCham China members recommend that the relevant Chinese government agencies recognize that cybersecurity transcends national borders, and work closely with other governments and private sector institutions to promote cybersecurity.

### Global Interoperability

#### Data Privacy Issues

The Cybersecurity Law defines “personal information” as “information of any type that is recorded by electronic or other means, and that is capable of, whether on its own or in combination with other information, distinguishing an individual identity.” This definition is overly broad, because in

## **互联网服务监管和互联网控制**

中国继续实施更加严格的互联网控制，阻碍了跨境数据流动，抑制了国际网络访问。这些限制损害了内外资企业在经济全球化条件下开展运营的能力。互联网信息服务一直被归为增值电信服务，从而禁止外国参与这些服务。2000年以来，《互联网信息服务管理办法》也在合法获得国家、合法访问、服务器本地化、数据留存、数据保密、内容过滤、实名身份注册等方面给互联网服务供应商订立了繁重的要求和规定。宽泛的控制包括互联网审查和随意拦截网站等。

商会会员企业建议进一步放宽互联网监管规定。只有采取全球性、无国界和市场导向的方法才能有效地应对互联网的发展并将阻碍发展的影响降至最低。

## **安全可控信息和通信技术**

为推动信息和通信技术采用“安全可控”标准，中国政府采取了多项措施，其中包括根据《网络安全法》起草的办法。银行、电信、医疗器械、保险和半导体等行业已经在努力推进。全国信息安全标准化技术委员会（“信安标委”）发布的标准草案将“安全可控”信息和通信技术定义为涉及源代码审查、数据本地化、跨境数据流限制以及供应链保障等要素。尽管这些标准依据要求指标进行评级，但在华外资信息和通信技术企业担心这会让他们在竞争中处于不利位置。一些企业甚至已经遭遇这种情况，因为正在与之接洽的地方政府、银行和保险公司已经力图遵守草案制定的信息和通信技术标准，仿佛这些标准已经生效实施。

商会促请中国政府确保网络安全政策制定过程公开和透明，并听取行业意见和建议，兑现关于制定严密规范和非歧视网络安全政策的承诺，参考国际标准。商会会员企业促请信安标委严密精准地明确“安全可控”的含义；以及用以确定产品或服务“安全可控”的客观标准。此外，“安全可控”的标准不应包括或暗示要求采购完全由国内设计或制造的信息和通信技术设备。此外，商会希望政府相关机构能认识到网络安全超越国界，与其他国家的政府和私营部门机构密切合作，共同推动网络安全。

## **全球互操作性**

### **数据保密问题**

新《网络安全法》将“个人信息”定义为“以电子或者其他方式记录的能够单独或者与其他信息结合识别自然

人个人身份的各种信息”。这一定义太过宽泛，因为在许多情况下，数据使用者不一定能够取得识别个人身份所需要的“其他信息”。商会强烈建议网络安全法实施规则将“个人信息”明确为“以电子或其他方式记录的能够单独或者与数据使用者能够合理获得的其他信息结合识别自然人个人身份的各种信息”。此外，个人信息的定义应该侧重于以个人身份进行的人的行为，而不应该侧重于商业环境中或处理公共领域信息的人的行为。

《网络安全法》要求网络运营者收集个人信息需要征得被收集者的同意，数据发生外泄需要告知。如有安全漏洞告知用户并向有关政府部门报告，并且持续提供安全维护。这些要求所产生的负担对于企业来说过于繁重、昂贵。商会建议即将出台的实施细则应基于使用目的或数据泄露的潜在风险而非基于同意或原则来确定个人数据处理的相关义务。例如，只有收集和敏感个人信息才需要征得被收集者的同意，其他类型的个人信息不需要。此外，如果数据外泄不涉及危害风险，或涉及公共信息或者没有链接任何敏感个人信息，数据使用者有权选择不告知。

## **标准政策**

### **发布新版《标准化法》以及信安标委的角色**

新版《标准化法》于2018年1月1日生效。旧《标准化法》可追溯到大约30年前，新法律对之前版本做了许多重要改革，确立了框架。因此，新法反映了中国经济从中央计划经济向市场驱动型经济的转变。

信安标委将在制定上述所有与安全相关问题的标准方面发挥决定性作用。商会欢迎市场驱动的标准化改革，并鼓励信安标委继续执行符合国际标准、透明开放、面向全球范围内参与者的、以市场为导向、以共识为中心、技术中立的标准制定进程。商会的会员还建议信安标委避免制定不清晰、具有保护主义倾向或者基于原产地偏袒特定技术的标准。最后，商会鼓励中国与国际标准化组织紧密合作，将国际标准纳入中国标准化的基础。

### **外资企业参与中国标准化系统的进展**

《外资企业参与中国标准化制定指南》是中国第一次公布类似指南，符合中国标准化体系中不歧视外资企业的原则。商会欢迎这一举措，这是解决长期存在问题的第一步。

然而，该指导方针似乎仅在国家标准的情况下是强制性的。对于其他标准，如产业、社会组织 and 地方标准，它



many cases the data user would not have access to the “other information” necessary to distinguish an individual identity. AmCham China strongly recommends that the implementing regulations for the Cybersecurity Law clarify the definition of “personal information” to read “information of any type that is recorded by electronic or other means, and that is capable of, whether on its own or in combination with other information to which the data user has reasonable access, distinguishing an individual identity.” Additionally, the definition of personal information should be focused on individuals acting in their personal capacity. It should not focus on people acting in a business context or on information in the public domain.

The Cybersecurity Law requires network operators to obtain the consent of data subjects to collect their personal information, and to provide notice in the event of a data breach. They must also report security vulnerabilities to customers and government authorities and provide continuous security maintenance. Such requirements can be very burdensome and costly. AmCham China suggests that the forthcoming implementing regulations ensure that obligations related to personal data are based on the risk of potential harm arising from the proposed use or data breach incident, rather than use a consent-based or rule-based approach. For example, the consent of the data subject should be required only for the collection and processing of sensitive personal information and not for other types of personal information. Also, if a data breach involves no risk of harm, or involves public information, or has no link to any sensitive personal information, the data user should be given the discretion not to provide notice of the data breach incident.

### **Standards Policies**

#### *Release of Updated Standardization Law and Role of TC260*

The updated Standardization Law entered into effect on January 1, 2018. The new Law establishes a framework for many important reforms on the previous Law, which dates from almost 30 years ago. As such, the new Law reflects the transformation of China’s economy from a centrally-planned economy to a more market-driven economy.

TC260 will have a decisive role in formulating standards for all of the security-related topics discussed above. AmCham China members welcome the market-driven transformation of standardization in China and encourage TC260 to continue implementing a standards development process that conforms to international norms and is transparent, open to participants on a global scale, market-driven, consensus-oriented, and technology-neutral. AmCham China members also advise TC260 not to adopt standards that are unclear or protectionist or confer advantages to particular technologies based on their place of origin. Finally, AmCham China encourages China to engage

closely with the international standardization community to make the incorporation of international standards the basis of standardization in China.

#### *Progress of FIEs Participating in China Standardization System*

The Guidelines for Participation by FIEs in Standardization in China is the first instance of such guidelines being published in the country. As such, it respects the principle of non-discrimination against FIEs in China’s standardization system. AmCham China welcomes this as a first step towards addressing long-standing concerns among FIEs.

However, the guideline appears to be mandatory solely in the case of National Standards. It does not seem to be compulsory for other standards, such as industrial, social organization and local standards, for which it is merely “encouraged.” AmCham China proposes extending the principle of non-discrimination to all standardization contexts. This would facilitate the transfer of international expertise and experience to China and improve the practical application of standards developed in China.

### **Recommendations**

#### *For the Chinese Government:*

- **The implementing rules and regulations for the Cybersecurity Law should not go beyond the scope of the Law as stated within its original text.**
- The definition of CII should be clarified and made applicable only to a specific and relatively narrow category of information infrastructure, retaining its fundamental connection to national security.
- The data localization requirement should be applied only to operators of CII, and not to “network operators.” The security assessment, and other requirements for operators of CII, should not be overly complicated.
- The framework requiring security assessments for cross-border transfers of Personal Information and “Important Data” by “network operators” should be removed. “Network operators” should instead be made subject to a cross-border data transfer framework that is modeled, even if loosely, on the APEC Cross-Border Privacy Rules system.
- TC260 should implement a standards development process that conforms to international standards, and is transparent, open to participants on a global scale, market-driven, consensus-oriented, and technology-neutral. TC260 should not adopt standards that confer advantages to particular technologies based on their place of

似乎并不是强制性的，因为它只是“鼓励如此”。商会建议将不歧视原则扩展到所有标准化环境。这将有助于将国际专业知识和经验转移到中国，并改善中国制定标准的实际应用。

## 建议

### 对中国政府：

- 《网络安全法》的实施规则不应超出原始案中表述的范围。
- 明确关键信息基础设施的定义，只适用于特定和相对狭义的信息基础设施类别，保持其与国家安全的基本联系。
- 数据本地化的要求应仅适用于关键信息基础设施运营商。确保关键信息基础设施运营商需要接受的安全审查或者其他要求不应过于复杂。
- 应取消框架中对“网络运营者”跨境转移个人信息以及“重要数据”需要接受安全评估的要求。相反，针对“网络运营者”应当采用相对宽松的亚太经合组织跨境隐私规则体系基础上的跨境数据传输框架加以管理。
- 信安标委应执行符合国际标准、透明开放、面向全球范围内参与者的、以市场为导向、以共识为中心、技术中立的标准制定进程。避免制定不清晰、具有保护主义倾向或者基于原产地偏袒特定技术的标准。采用能够反映这一新兴行业具有的国际性和无国界性质的全球标准和政策。将云计算重新归类，从增值电信服务类改为计算机相关服务。
- 不应拒绝外资企业进入中国的信息和通信技术市场，外资企业也不应受到任何歧视性政策的限制。放宽对外资企业参与云服务和其他新型信息和通信技术服务的外资持股比例限制、许可限制以及市场准入壁垒。
- 商用密码产品不应受到监管，且商用密码不应归为国家机密。不应该对加密产品的进口进行管制，并对国际算法给予同等的承认。企业不应被要求

获得进口商业加密产品的许可证，并继续敦促不要求加密产品进行任何要求披露源代码或知识产权的测试或评估。

- 明确“个人信息”的定义，新《网络安全法》的实施规则采用基于风险和损害的方法。

### 对美国政府：

- 促进与中国机构在国际标准设定论坛上的合作，鼓励在中国采用国际标准。
- 继续推进亚太经合组织跨境隐私规则体系、亚太经合组织隐私框架，并促进将其作为亚太经合组织区域的共识标准。
- 继续向中国政府同行解释《网络安全法》中关于跨境数据转移框架中一些规定以及中国数字经济整体发展对“网络运营者”产生的不利影响。

origin. Adopt global standards and policies that reflect the international and borderless nature of cloud computing. Change the category of cloud computing to CRS rather than a VATS.

- Foreign enterprises should not be denied access to China’s ICT market or be made subject to any discriminatory policies. Restrictions should be relaxed on participation by foreign enterprises in cloud computing and other emerging ICT services, such as foreign shareholding limitations, licensing restrictions, and market entry barriers.
- Commercial encryption products should not be regulated, nor should commercial encryption be classified as a state secret. The import of encryption products should also not be regulated, while equal recognition should be given to international algorithms. Moreover, enterprises should not be required to obtain a license to import commercial encryption products, nor should encryption products be required to undergo any testing or evaluation that requires the disclosure of a source code or intellectual property.
- Clarify the definition of “personal information,” and adopt an approach based on risk assessment in implementing regulations for the new Cybersecurity Law.

*For the US Government:*

- **Promote cooperation with Chinese agencies in international forums for standard setting and encourage the adoption of international standards in China.**
- Continue to promote the APEC Cross-Border Privacy Rules system, the APEC Privacy Framework, and the adoption of these as a consensus standard across the APEC region.
- Continue to explain to counterparts in the Chinese government the negative effects on “network operators” that would be produced by the cross-border data transfer framework currently proposed under the Cybersecurity Law, as well as on the general development of China’s digital economy.



# Insurance

## Introduction

**A**mCham China noted in our 2017 White Paper that the pace of reform to modernize China’s insurance industry into an important, market-oriented and prudentially supervised component of a modern financial system, as specified in the August 2014 release of the “Several Opinions of the State Council on Accelerating the Development of the Modern Insurance Service Industry in the People’s Republic of China” (New Ten Opinions), was too slow and complicated by the unsuitable investment strategies of certain inexperienced domestic insurers.

The New Ten Opinions recognized that “accelerating the development of the modern insurance service industry is an important part of improving the modern financial system” in China and endorsed a market orientation featuring fair competition and the opening of China’s insurance market.

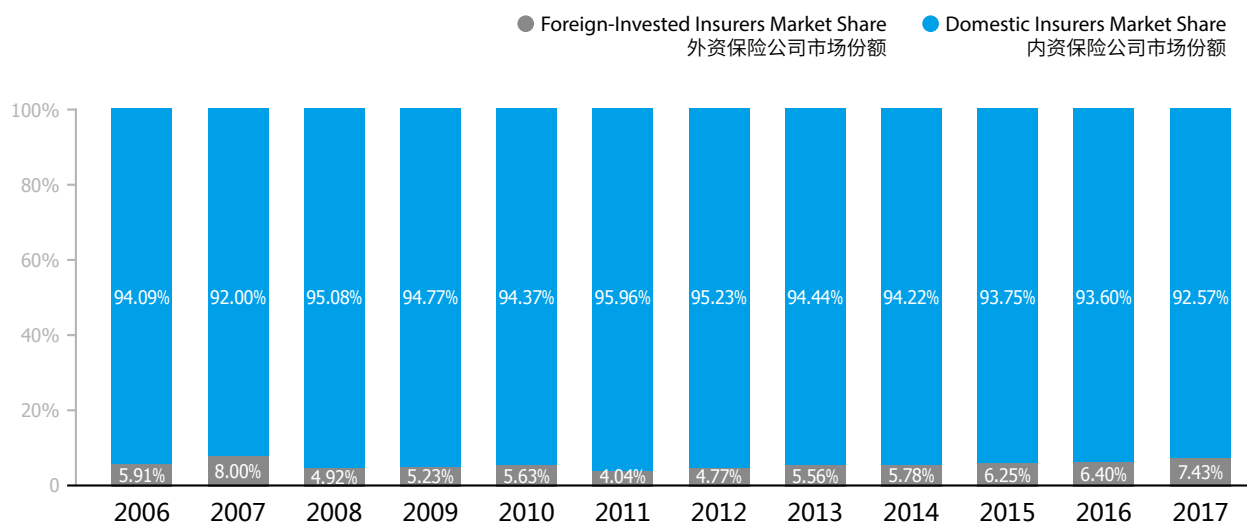
AmCham China continues to view this as an important step towards a fairer and more developed insurance market, which can advance the financial security of the Chinese people and the stability of China’s economy.

We urged faster removal of market entry and expansion barriers to experienced foreign insurers, enabling them to expand the market and offer China’s consumers a wider choice of products and services to provide for their financial security. We were confident that doing so would not only benefit US insurance companies, but would also spur domestic insurance companies to improve their business practices to the benefit of Chinese consumers and the overall health of China’s financial system and economy, including the prudential investment of insurance funds in the real economy.

Unfortunately, the concerns which we raised have been shown to be justified by events. Financial industry supervisors discovered that non-prudential marketing and invest-

## Foreign Life Insurance Market Share in China

外资寿险公司在中国市场所占有的份额



Source: CIRC

来源：中国保险监督管理委员会

# 保险

## 引言

**中** 国美国商会（商会）在 2017 年度《白皮书》中指出，中国保险业现代化改革总体步伐过慢，一些经验不足的内资保险公司冒进的投资策略使得局面更加复杂。国务院在 2014 年 8 月颁布的《关于加快发展现代保险服务业的若干意见》（以下简称“新十条”）中对保险业现代化改革作出具体说明，其目标是使中国保险业成为现代金融体系中一个重要的、以市场为导向的、受到严格监管的组成部分。

“新十条”认为，在中国“加快发展现代保险服务业对完善现代金融体系具有重要意义”，并确定坚持市场主导的基本原则，营造公平竞争的市场环境，提升中国保险市场的开放水平。商会认为，“新十条”的出台意味着中国向建立更加公平和完善发达的保险市场迈出了重要一步，有利于提高中国民众的财产保障水平，促进中国经济稳定发展。

商会促请尽快取消对经验丰富的外资保险公司的市场准入和拓展壁垒，使其能够在华开拓市场、为中国消费者提供更多用以保障其财产安全的产品和服务。商会相信，这样做不仅有利于美国保险公司，更能激励国内保险公司改善其商业行为，从而使中国消费者受益，并提高中国金融体系和经济的整体健康，其中包括保险资金在实体经济审慎投资。

令人感到遗憾的是，商会所提出的担忧已在过往事件中被证明是合理的诉求。金融业监管人员发现，非审慎性营销和投资策略所造成资产与负债状况的严重失衡已危及金融体系的健康。新兴内资人寿保险公司曾极力推广仅作为理财产品而非真正人寿保险单的极短期万能寿险单，并随后将保险资金投入股市和高息贷款。而这一行为加剧了整个经济体的金融风险，并危及金融稳定。因此，中国保险监督管理委员会（CIRC）（现已整合并入中国银行保险

监督管理委员会）最终被迫对几家全内资或主要由内资控股的人寿保险公司实施严厉的监管制裁。这也可能是导致当时中国保监会领导层变动的原因之一。

## 现存监管问题

### 市场准入和拓展

许多美国保险公司拥有数十年为世界各地客户提供保险服务的经营管理经验，在世界各地拥有众多客户，他们希望将自己的产品提供给中国消费者。但是，为了在中国开展保险业务，外资保险公司需要获得在华经营牌照、并得到平等的国民待遇，以便与中资保险公司在平等基础上进行竞争。遗憾的是，外资保险公司仍面临着人为设置的持股比例上限、保险牌照发放和新产品审批迟缓及其他障碍。例如，外资保险公司在股权变动方面，面临人为设置的时限要求和其他障碍，且自主程度低于内资企业。商会将一如既往地支持中国政府以自由贸易试验区作为起点推动市场开放，在全国范围内清除这些障碍。

### 人寿保险

商会对 2017 年 11 月外交部和财政部副部长朱光耀联合宣布将提高合资寿险公司中外资持股比例上限的举措表示欢迎。为在中国加入世贸组织后对内资寿险公司加以保护，中国政府曾在 2001 年规定寿险行业外资的股权上限为 50%。这一上限在当下已失去保护国内寿险行业的合理性。在市场规模保持两位数增长，且相比于新兴内资寿险公司，许多外资寿险公司拥有在世界各地丰富的稳健经营经验情况下，截至 2017 年，在华所有外资寿险公司的总市场份额只有 7.43%。另外，商会对中国承诺解除股权上限的缓慢步伐感到失望。中国计划在三年后将上限上调至 51%，5 年后上调至 100%。这意味着该上限最早在 2022 年，即在中国加入世贸组织至少 21 年后，才能完全解除。除此之外，在该措施的实施条例颁布之前，对外国投资者的硬性要求

ment strategies created acute asset-liability mismatches jeopardizing the health of the financial system as newer domestically-invested life insurance companies, in particular, marketed very short-term universal life insurance policies that functioned as wealth management products rather than true life insurance policies. Such companies then invested the insurance funds in the stock market and high interest loans, aggravating economy-wide financial risk and jeopardizing financial stability. The China Insurance Regulatory Commission (CIRC) was ultimately compelled to impose severe supervisory sanctions on several wholly or majority domestically-controlled life insurance companies which may have contributed to changes in CIRC's leadership.

## Ongoing Regulatory Issues

### *Market Entry and Expansion*

US insurance companies, many of which have decades of experience serving consumers around the world, want to deliver their products to Chinese consumers. But, in order to do so, foreign-invested insurance companies need both to acquire a license to operate in China and be accorded national treatment, so they can compete on a level playing field with their domestically invested counterparts. Unfortunately, foreign-invested insurers continue to face artificial ownership caps and delays in the issuance of licenses and new product approvals, as well as other barriers. For example, foreign-invested insurers are subject to artificial timeframes and other barriers with respect to ownership changes, and have less autonomy than their domestic counterparts. AmCham China continues to favor removing these barriers nationwide, with the pilot free trade zones (PFTZs) as a natural starting point for liberalization.

### *Life Insurance*

AmCham China welcomes the announcements by the Ministry of Foreign Affairs and Vice Minister of Finance Zhu Guangyao in November 2017 that the equity cap on foreign investment in the life insurance industry will be raised from the 50 percent cap set in 2001 to protect domestic life insurers after China's accession to the World Trade Organization (WTO). This cap has lost all justification to protect the domestic industry as all foreign life insurers combined still had only a 7.43 percent share in 2017 in a market expanding at a double-digit pace, even though many such insurers have much greater experience operating prudentially around the world compared to many of the newer domestically-invested life insurers. AmCham China is moreover disappointed by the slow pace of China's announced commitment to lift the equity cap. China intends to lift the cap to 51 percent after 3 years and 100 percent after 5 years. This means that the cap will not be completely lifted until 2022 at the earliest, at least 21 years after China's WTO accession. In addition, until implementing regulations are issued, the requirements that foreign investors

will have to meet and any remaining geographic and other restrictions on their ability to do business remain unclear, including whether the lifting of the cap applies to both de novo and existing life insurance companies.

### *Property Insurance*

In 2017 CIRC rolled out several measures to enhance the property insurance industry's function of protecting the real economy. CIRC in September convened a meeting with foreign-invested insurers, encouraging their greater participation in China's growing market. AmCham China notes, however, that the insurance industry's current regulatory structure does not differentiate among insurers based on form of incorporation, portfolio mix or scale of business. For example, regulation of property insurers should vary based on product lines, encouraging both monoline and multiple insurers. Similarly, smaller insurers, including foreign-invested property insurers which in aggregate hold less than a 2 percent market share, should be subject to less stringent supervision than their larger competitors to reduce regulatory compliance burdens. AmCham China therefore recommends CIRC to consider issuing regulatory guidelines that distinguish more precisely among property insurers to foster expansion and market growth.

CIRC in April 2017 issued the "Guidelines on Serving the Belt and Road Initiative by the Insurance Sector," inviting foreign-invested property insurers the opportunity to work with domestic players to support the Belt and Road Initiative better by fully leveraging their international network footprint and multinational insurance experience. AmCham China member companies are pleased to be invited to do so. However, AmCham China also suggests that CIRC continue to refine the supervisory framework for streamlining insurance engagement in such cross-border transactions by, for instance, relaxing the territorial limitations for Large Commercial Risks (LCR) and Master Policies, and also coordinating with the Ministry of Finance and the State Administration of Taxation on the application of VAT to eliminate or at least to expand the VAT exemption.

### *Health Insurance*

AmCham China welcomes the statement by CIRC Vice Chairman Chen Wenhui on September 5, 2017 at a meeting with representatives of foreign insurance companies that China intends to further open its insurance industry to licensed foreign-invested insurance companies by allowing them to develop health, pension and disaster insurance business in China. Coupled with the announcements by the Ministry of Foreign Affairs and Vice Minister of Finance Zhu Guangyao that China will lift the equity cap on foreign investment in personal insurance, AmCham China is optimistic that its member companies in the health insurance industry will soon be able to introduce their advanced concepts, know-how, technology and products to China to promote the development of the industry and enhance the

## China's Life Insurance Market Trends

### 中国人寿保险市场趋势

Unit: RMB 10,000  
单位: 万元

Year 年份	Total Premiums 保费总额	Annual Rate of Increase 年增长率	Domestic Life Insurers Premiums 内资人寿保险公司 保费收入	Domestic Insurers Market Share 内资人寿保险公 司市场份额	Foreign Life Insurers Premiums 外资人寿保险公司 保费收入	Foreign- Invested Insurers Market Share 外资人寿保险公 司市场份额
2005	36,462,272.93	--	33,218,254.54	91.10%	3,244,018.40	8.90%
2006	40,610,901.22	11.38%	38,210,195.08	94.09%	2,400,706.14	5.91%
2007	49,489,681.18	21.86%	45,531,728.23	92.00%	3,957,952.94	8.00%
2008	73,375,667.35	48.26%	69,765,688.07	95.08%	3,609,979.28	4.92%
2009	81,441,829.89	10.99%	77,179,179.39	94.77%	4,262,650.50	5.23%
2010	105,008,832.08	28.94%	99,094,121.63	94.37%	5,914,710.45	5.63%
2011	95,600,039.46	-8.96%	91,736,458.00	95.96%	3,863,581.45	4.04%
2012	99,578,863.13	4.16%	94,825,325.85	95.23%	4,753,537.28	4.77%
2013	107,409,258.64	7.86%	101,440,741.08	94.44%	5,968,517.56	5.56%
2014	126,902,846.51	18.15%	119,564,660.37	94.22%	7,338,186.14	5.78%
2015	158,591,310.46	24.97%	148,680,436.37	93.75%	9,910,874.10	6.25%
2016	216,928,108.22	36.78%	203,046,091.58	93.60%	13,882,016.64	6.40%
2017	260,395,488.67	20.04%	241,058,872.31	92.57%	19,336,616.36	7.43%

Source: CIRC

来源: 中国保险监督管理委员会

和诸如地域、经营能力等方面的限制仍不明确，其中也包括解除上限是否同时适用于新成立和现有的人寿保险公司。

### 财产保险

2017年，中国保监会（现已整合并入中国银行保险监督管理委员会）推出多项加强财产保险业对实体经济保护功能的措施。中国保监会于9月召开外资保险公司座谈会，鼓励外资保险公司以更积极的姿态参与中国保险市场发展。但商会注意到，保险行业目前的监管结构并未根据公司形式、投资组合或业务规模对保险公司进行区分。例如，财产保险公司的监管应该根据产品线而有所不同，鼓励单一险种保险公司和多险种保险公司。同样，较小的保险公司，

包括市场份额总计少于2%的外资财产保险公司，应受到相比于其较大竞争对手而言相对宽松的监管，从而减少较小保险公司所面临的监管合规负担。因此，商会建议中国银行保险监督管理委员会考虑颁布监管指南，更准确地区分不同的财产保险公司，以促进业务拓展和市场增长。

中国保监会（现已整合并入中国银行保险监督管理委员会）于2017年4月发布了《关于保险业服务“一带一路”建设的指导意见》，邀请外资财产保险公司与国内企业携手合作，充分利用其国际网络和跨国保险经验，更好地服务“一带一路”倡议。商会的会员企业非常乐意响应此邀请。然而，商会同时建议中国银行保险监督管理委员会继续完



wellbeing and security of Chinese citizens. As we stated in last year's White Paper, our specialist health insurers welcome the opportunity to bring their expertise and experience to bear to make the "Healthy China 2030" initiative a reality. In this light, we look forward to participating in the ongoing revision of the Measures for the Administration of Health Insurance.

### *Reinsurance*

While more systematic regulation of solvency in the insurance industry is appropriate, AmCham China believes that C-ROSS imposes unreasonable capital charges and collateral requirements on cross-border transactions between Chinese ceding insurers and reputable offshore reinsurers with financially sound ratings in their home jurisdictions. AmCham China believes that such capital charges and collateral requirements are unnecessary because CIRC has other means to ascertain the soundness of such offshore reinsurers, including by established means of consultation with their home country supervisors. Moreover, the adverse weighting of cross-border reinsurance transactions discourages cross-border reinsurance transactions with the perverse consequence of concentrating risk in China rather than dispersing risk more widely. AmCham China urges CIRC to reconsider C-ROSS Chapter 8 Credit Risk Minimum Capital to prevent such unfortunate concentration of risk.

AmCham China is also concerned that by concentrating risk onshore, the C-ROSS framework will adversely affect international reinsurers by overweighting credit risk and imposing collateral requirements even for those international reinsurers subject to compliance supervision in their home jurisdictions, satisfying the requirements for mutual recognition in accordance with the recommendations of the International Association of Insurance Supervisors.

### *Brokerages*

Although the 2015 edition of the "Catalogue of Industries for Guiding Foreign Investment" removed foreign investment in insurance brokerages from the "restricted" category, the January 2017 State Council Document No. 5, "Notice of the State Council on Several Measures for Expansion of China's Opening to the Outside World and Active Use of Foreign Capital," addressed the relaxation of restrictions on foreign investment in insurance intermediaries, and Premier Li Keqiang in his 2018 Government Work Report on March 5 announced the lifting of restrictions on foreign insurance brokerages, CIRC has yet to require that foreign-invested insurance brokers' business licenses be consistent with those of domestically-invested brokers. At the 19th Party Congress in October 2017, it was further stated that the environment for foreign investment will be improved by providing national treatment for foreign investors and fully implementing the negative list system for foreign investment on a nationwide basis. Nevertheless, the timing for implementation with respect to insurance intermediaries has yet to be announced,

even though broader market participation by mature international intermediaries will improve the industry. AmCham China continues to recommend CIRC to adopt the regulations necessary to implement national treatment and larding policy promptly. Further delay denies Chinese consumers a wider choice of brokerages for brokering smaller scale commercial risks, automobile insurance, and individual life and accident insurance.

AmCham China also notes that the draft "Insurance Broker Regulations" were circulated at the end of 2016 for public comment. These regulations would stipulate that insurance brokers shall be segregated from reinsurance brokers, which is inconsistent with international practice and difficult to implement without further guidance. The draft in its current form will adversely impact the insurance placement process to the detriment of consumers.

### *Insurance Asset Management Companies*

AmCham China applauds the increased issuance of licenses for insurance asset management companies (IAMCs) since 2011 and the establishment of the Insurance Asset Management Association of China in 2014. However, CIRC continues to regulate this industry based on the 2004 "Interim Provisions on the Regulation of IAMCs," which requires that IAMCs have at least two founding shareholders, even though the amended Company Law requires only one founding shareholder. In other words, all insurance companies are required to partner with a second company to manage their own funds. AmCham China urges deletion of the second founding shareholder requirement to bring IAMC regulations into alignment with the Company Law which allows one founding shareholder.

### *Sales and Service Channels*

#### Branching

AmCham China recognizes that branch application procedures have formally leveled the playing field between foreign-invested and domestically-invested insurers with respect to branch as well as sub-branch approvals. However, in comparison to domestically-invested insurers, foreign-invested insurers still suffer from more rigorous and lengthier branch approval procedures, including the effective refusal to consider concurrent applications. Such slow approval pace hampers the ability of foreign-invested insurers to serve consumers. AmCham China continues to urge CIRC to promptly review foreign-invested insurers' branch applications, including concurrent branch applications of qualified foreign-invested insurers.

#### Internet Insurance

The development of Internet insurance presents a tremendous opportunity for China to effectively promote innovation and financial reform, and a unique opportunity for foreign

善监管框架，以简化跨境交易中的保险业务，具体措施如：放宽大型商业风险（LCR）和总保单的地域限制；与财政部和国家税务总局协调增值税的申请，以消除或至少扩大增值税豁免。

## 健康保险

中国保监会（现已整合并入中国银行保险监督管理委员会）副主席陈文辉于 2017 年 9 月 5 日在与外资保险公司代表的会谈中表示，中国有意进一步向其已许可的外资保险公司开放保险业，允许外资保险公司在中国发展健康保险、养老保险和灾害保险业务。商会对此表示欢迎。同时，外交部和财政部副部长朱光耀也表示，中国将提高外资在人身保险领域的股权上限。商会对其健康保险业的会员企业在不久后能够向中国引进其先进的理念、专业知识、技术和产品，以促进行业发展，并增强中国公民福利和安全的前景持乐观态度。正如商会在去年的《白皮书》中所述，商会专业的健康保险公司愿意将其专业知识和经验引入中国，推动《“健康中国 2030”规划纲要》的实现。因此，商会期待参与正在进行的《健康保险管理办法》的修订工作。

## 再保险

尽管对保险行业的偿付能力进行更为系统的监管实属必要，但商会认为，偿二代对中国分出保险公司和在本国声誉良好且经济实力雄厚的海外再保险公司进行跨境交易施加了不合理的资本费用和担保要求。商会认为上述资本费用和担保要求并无必要，因为中国银行保险监督管理委员会可以通过其他途径来查明上述海外再保险公司的财务实力，包括可以通过现有的沟通渠道与其母国监管机构进行核查。另外，对跨境再保险交易的过度监管会抑制跨境分出交易，反而造成风险集中于中国国内，而不是广泛分散风险。商会促请中国银行保险监督管理委员会重新考虑保险公司偿付能力监管规则第 8 号文“信用风险最低资本”中的相关规定，从而避免出现上述风险集中的不利状况。

商会同时担心，由于目前风险集中在中国境内，偿二代框架会对国际再保险公司，甚至是那些已在其母国接受合规监管，并已根据国际保险监管协会的建议，满足相互认可要求的国际再保险公司，施加过多的信用风险和担保要求。

## 保险经纪

虽然 2015 年修订的《外商投资产业指导目录》不再将保险经纪列为限制外商投资类，2017 年 1 月国务院 5 号文件“国务院关于扩大中国对外开放和积极利用外资的若干

措施的通知”重点放宽外资保险中介机构限制，且李克强总理在 2018 年 3 月 5 日的政府工作报告中宣布解除对外资保险经纪公司的限制，中国银行保险监督管理委员会尚未要求外资保险经纪公司的营业执照与内资保险经纪公司的营业执照一致。2017 年 10 月举行的第十九次党代会进一步提出将通过为外国投资者提供国民待遇和在全国范围内全面实施外商投资负面清单制度，来改善外商投资环境。尽管如此，即使成熟的国际中介机构通过更广泛的市场参与能改善该行业，和保险中介机构相关的措施的实施时间仍未公布。商会促请中国银行保险监督管理委员会及时制定规章制度，以确保国民待遇和相关政策的落地实施。相关规章制度制定的进一步拖延将使中国消费者无法在更大范围的保险经纪公司中来选择较小的商业风险、汽车保险、人身和意外保险。

商会也注意到，2016 年底，中国保监会发布《保险经纪人监管规定（征求意见稿）》向社会公开征求意见。该规定明确要求再保险经纪业务与其他保险经济业务实行隔离。这一要求不仅不符合国际惯例，而且在没有进一步指导的情况下，将难以执行。目前的草案将对客户的保险安排产生不利影响。

## 保险资产管理公司

商会对自 2011 年以来保险资产管理公司牌照的发放数量的和 2014 年中国保险资产管理协会的设立表示欢迎。但是，中国银行保险监督管理委员会却继续依照 2004 年实施的《保险资产管理公司管理暂行规定》进行行业监管。该规定要求保险资产管理公司应当至少有两名发起人股东，即使修订后的《公司法》只要求一名发起人股东。换句话说，所有保险公司均需与另外一家公司合作管理自己的资金。商会促请取消至少两名发起人股东的要求，从而使保险资产管理公司管理规定与《公司法》的要求相一致，允许一名发起人股东发起设立保险资产管理公司。

## 销售和服务渠道

### 设立分支机构

外资保险公司在中国境内申请设立分支机构时，原则上享受与内资保险公司同样的待遇，对此商会表示认可。但是，相比内资保险公司，外资保险公司在申请设立分支机构时往往需要面临更为严格和漫长的审批流程，包括直接驳回外资保险公司同时设立多家分支机构的申请。如此缓慢的审批速度会束缚外资保险公司为中国消费者提供服

insurers to acquire new customers cost-effectively and build brand awareness. AmCham China applauds CIRC's issuance of the "Interim Measures on the Administration of Internet Insurance Business" in July 2015, allowing insurers to sell certain types of insurance products under certain conditions through the Internet, even in provinces where they do not maintain a branch. However, while there is a huge need now for health insurance products (including critical illness insurance products), which will only increase as the population rapidly ages, such products are still not allowed to be sold online nationwide. AmCham China recommends further opening this channel by expanding the range of products permitted to be sold online to include critical illness products, which will meet customer needs better and further contribute to China's ambitious goals of reforming the financial sector, enhancing financial inclusion and supplementing public health insurance.

### Investment of Insurance Funds

AmCham China applauds the continued loosening of restrictions on investment vehicles that has opened new investment channels and markets. However, we urge that the size and investment experience of the corporate parents of insurance companies be taken into account when determining qualifications to invest insurance funds in the capital market. Taking these factors into account would greatly assist in transferring knowledge from mature markets to China. It would also help mitigate the shortage of local talent with adequate experience and sophistication for investing in new asset classes. We also hope that related regulatory policies will be issued to provide the necessary risk-hedging tools for these new asset classes and for insurance capital in general.

### Tax Issues

#### Heavier Tax Burden for Insurers Due to VAT Reform

In direct contrast to the State Council's Value-Added Tax (VAT) reform objective of reducing the tax burden on enterprises, especially in the services sector, the tax burden of insurers in China increased significantly after full implementation of the "business tax to VAT" reform in 2016. The tax burden has increased mainly because the reform extended application of the VAT to interest income from fixed-income investment products like corporate bonds, which had been tax-exempt under the business tax system. In addition, the reform raised the tax rate for taxable premium-related products from five percent to six percent. Although input VAT is deductible, the deductible ratio is insufficient so the tax rate on premium income is largely unchanged in practice. The increased levies on insurers reduce their profitability in the near term, profoundly impacting their pricing and actuarial practices, and harming the interests of Chinese policyholders. AmCham China recommends the State Administration of Taxation (SAT), in coordina-

tion with related agencies, alleviate the heavier tax burden on insurers. We recommend maintaining the tax-exempt status for interest income from corporate bonds and debt programs, or at minimum adopting a "cut-off" approach to exempt bonds issued prior to the reform from VAT. We also recommend that SAT provide more clarity and consistency in its rules for the insurance industry, unify the scope of VAT application across the country, and expand the deductibility range for input VAT. Meanwhile, we are pleased that representative offices of foreign insurance companies have been determined to be VAT-exempt.

### Pension Insurance

AmCham China welcomes the promulgation in 2016 by the Ministry of Human Resources and Social Security and the Ministry of Finance of the Provisional Measures for the Administration of Occupational Annuity Funds for public employees. Together with enterprise annuities, the Measures help to build a solid second pillar to supplement China's mandatory social insurance system. As we noted last year, AmCham China supports tax-deferred treatment for employer-based retirement plans and recommends that the ceiling on such contributions be raised to incentivize employees to save more for their own retirement.

In addition to the second pillar, there is wide ranging industry consensus in favor of a third pillar of individual savings for retirement. On this front, CIRC has yet to release its long-awaited pilot individual tax-deferred pension insurance program. AmCham China believes that it is critical for individuals to be given a wide choice of insurance and investment products for voluntary, tax-incentivized retirement saving accounts. We note, however, that no foreign pension providers have been licensed to operate in China despite their many years of experience and expertise in global markets. We recommend the government to allow foreign-invested firms to participate in retirement finance to the same extent as domestically-invested financial services companies.

### Tax-Deferred Individual Retirement Accounts

To the disappointment of many in the industry, the pilot individual tax-deferred pension insurance program has yet to be launched despite years of planning. There is talk of extending the program to include other investment products as well as insurance in an individual retirement account-type third pillar pension program. We applaud this initiative and hope to see the program launched in the near future. We note, however, that no foreign-invested pension insurers or asset managers have been licensed to operate in China despite their many years of operating experience in other countries. We also hope that foreign-invested firms will be allowed to participate in the program to the same extent as domestically-invested financial services companies.

务的能力。商会将继续敦促中国银行保险监督管理委员会加快对外资保险公司设立分支机构的审批速度，其中包括允许符合条件的外资保险公司同时设立多家分支机构。

### **互联网保险**

互联网保险业务的发展为中国有效推动创新发展、深化金融体制改革带来了巨大机遇，也为外资保险公司以较低成本获取新客户和提升品牌知名度创造了难得的机会。商会对中国保监会 2015 年 7 月出台的《互联网保险业务监管暂行办法》表示赞赏，该办法允许保险公司在一定条件下可以通过互联网经营特定类型的保险产品，且不受该保险公司是否在该省设有分支机构的限制。虽然目前人们对健康保险产品（包括重大疾病保险产品）有着巨大的需求，且这种需求将随着人口快速老龄化将进一步增加，但是这类产品仍然不能通过互联网在全国范围内销售。商会建议通过将重大疾病保险产品纳入允许保险公司在全国范围内在线销售的保险产品的范围，进一步放开在线销售渠道。此举将更好地满足用户需求，推动中国尽早实现金融体系改革、推进金融普惠以及补充社会医疗保险的战略目标。

### **保险资金投资**

商会赞同中国政府持续放宽对投资工具的限制，这一举措有助于开拓新的投资渠道和市场。但是，商会呼吁，在确定保险公司使用保险资金投资资本市场的资质时，应充分考虑该保险公司母公司的规模和投资业绩。考虑这些因素有助于推动成熟市场的专业知识输入中国，更能缓解中国在新兴资本投资领域缺乏具备专业经验和技能的本土人才问题。商会还希望，中国能够尽快出台相关监管政策，为上述新兴资产类别以及保险资金提供必要的风险对冲工具。

### **税务问题**

国务院实施增值税改革的初衷是为减轻企业特别是服务行业企业的税负，然而，2016 年“营业税改增值税”改革全面实施后，中国保险公司的税负却大大增加。税负之所以增加，主要是因为改革将增值税适用范围扩大到公司债券等固定收益类投资产品的利息收入，而在营业税体制下这类收入都是免税的。另外，改革还将保费收入相关的应税产品的税率从 5% 提高到 6%，虽然由此发生的进项增值税可以抵扣，但是在实践中，抵扣比率不足，导致保费收入相关的税负变动不大。税费负担增加将会降低保险公司的短期盈利能力，对保险公司的定价和精算行为产生

极大影响，最终损害中国投保人的利益。因此，商会促请国家税务总局同相关部门协作减轻保险公司的税负。商会建议保留公司债券和债务项目利息收入的免税资格，或者至少采取“新老划断”方式，对增值税改革之前发行的债券实行免税。我们也建议国家税务总局提高保险行业相关规则的明确性和一致性，在全国统一增值税适用范围并且扩大进项增值税的抵扣范围。同时，商会对外资保险公司的代表处能够获得免征增值税的待遇表示赞赏。

### **养老保险**

商会赞同人力资源和社会保障部以及财政部于 2016 年针对机关事业单位工作人员颁布的《职业年金基金管理暂行办法》。该办法与企业年金将有利于构建坚实的第二支柱，以补充中国的强制性社会保险制度。正如商会去年所指出的，商会支持基于雇主的退休计划延迟缴纳个税的举措，希望有关部门考虑提高相应的养老金缴纳比例上限，从而进一步鼓励员工增加养老储蓄。

除第二个支柱之外，业界普遍同意支持作为第三支柱的个人储蓄性养老保险。在这方面，中国银行保险监督管理委员会尚未公布其令人期待已久的个人递延退休金保险试点计划。商会认为，为个人提供广泛的保险和投资产品选择对于出于自愿、税收激励的退休储蓄账户至关重要。然而，商会注意到，尽管在国际市场拥有多年的经验和专业知识，外国养老金供应商并未获准在中国经营业务。我们建议政府允许外资企业与内资金融服务公司同等参与退休理财业务。

### **递延纳税的个人养老保险账户**

令业界很多人感到失望的是，虽然已经筹划多年，个税递延型养老保险试点项目仍未启动。业界有提议将其他投资产品和保险一样纳入第三支柱的个人养老账户中。商会对此表示欢迎并且希望能够在不久的将来得以实施。但是，商会注意到，外资养老保险公司或资产管理公司虽然在其他国家有着多年的经营经验，却没有获得在华经营的牌照。商会也希望外资企业能同内资金融服务公司一样参与到该项目中来。

### **监管和合规成本**

拥有丰富国际市场从业经验的商会会员企业发现，与其他大多数市场相比，在中国开展保险业务的运营成本极高，特别体现在行政审批和合规要求极其繁琐，例如对信

## Regulatory and Compliance Costs

Our members, who have extensive international experience, find that the costs of operating in China are very high compared to most other markets. Administrative and compliance burdens are particularly onerous, including information technology (IT) requirements and rules regarding claims, finance, and compliance personnel for new branches. AmCham China urges CIRC to simplify costly burdens wherever possible, and take these burdens fully into account when considering compliance requirements.

## Recent Developments

### C-ROSS

In 2016, CIRC began formal implementation of the China Risk-Oriented Solvency System (C-ROSS), China's second generation solvency regime, and its regional bureaus have been inspecting insurance companies for compliance with C-ROSS. On September 18, 2017, CIRC issued the "Planning for C-ROSS Phase II," officially launching Phase II of the project. CIRC plans to complete implementation within three years. However detailed regulations and guidelines have yet to be released. Because C-ROSS is a far-reaching and complex set of new rules, CIRC needs to ensure that all bureaus and officials interpret its provisions consistently. Consistency and transparency are important to companies' ability to promptly and properly comply with C-ROSS.

Nevertheless, enforcement needs to be principles-based and aligned with the Insurance Core Principles of the International Association of Insurance Supervisors and not stand as "one size fits all." As insurance companies differ widely in size, complexity, nature of businesses, and products offered, C-ROSS should take into account the specific nature of a company's business. In order to facilitate smooth and uniform enforcement, we hope to see an official procedure where companies can submit written inquiries to CIRC concerning specific C-ROSS provisions for responses in written public statements. Publicly available CIRC written interpretations would mitigate the risk of inconsistency in policy implementation.

### China's Cybersecurity Law

China's Cybersecurity Law took effect on June 1, 2017, and since then multiple regulations and standards have been drafted to implement the Law, including the finalized Measures for Security Examination of Network Product and Services (Trial Implementation) ("网络产品和服务安全审查办法(试行)", effective June 1, 2017); the finalized Catalogue of Network Critical Equipment and Network Security Special Products (First Batch) ("网络关键设备和网络安全专用产品目录(第一批)", effective June 1, 2017); the pending Regulations for Critical Information Infrastructure (CII) Security Protection ("关键信息基础设施安全保护条例"); draft Measures for Security Assessment of Personal

Information and Important Data Outbound Flow ("个人信息和重要数据出境安全评估办法", draft "Measures") and the supporting national standards, also in draft, Guidelines for Data Outbound Flow Security Assessment ("数据出境安全评估指南") and Personal Information Security Specifications ("个人信息安全规范"). Implementation and enforcement is led by the Cyberspace Administration of China.

We understand the challenges that Chinese regulators face in managing new technologies and addressing cybersecurity concerns. However, this Law and the draft measures and guidelines set overly broad restrictions on cross-border data flows, which will create barriers to both Chinese and foreign companies operating in industries where data needs to be shared internationally. The draft Measures in particular further extend the burden of conducting security assessments of exported personal information and important data subject to security review specified in the Law from CII Network Operators to virtually all Network Operators. In addition, critical information infrastructure, "critical information" and "important information," and "applicable supervisors" as identified or defined in the draft regulations and standards encompass a vast range of data, industries and sectors which extends far beyond international norms. This will impose a tremendous impact on insurers, disproportionately affecting foreign insurers, in carrying out their business operations that involve personal data and cross-border data transfers. AmCham China believes that cybersecurity is complex and requires cooperation across national boundaries. The consequence will be higher costs outweighing any benefit to consumers. We recommend the government to reconsider the balance between privacy and data security protection on the one hand and industry development on the other hand when finalizing these regulations and standards to ensure data security and promote technological innovation without unduly restricting cross-border data transfers.

### CIRC's "Draft Administrative Regulations on the Informatization of Insurance Institutions"

CIRC is contemplating a new rule governing the information systems of insurance institutions after issuing the "Draft Administrative Regulations on the Informatization of Insurance Institutions" (the Draft Informatization Regulations) in October 2015 and notifying the revised version to the WTO in April 2016. These require insurers to give priority in the procurement of IT hardware and software to "secure and controllable" products.

The Draft Informatization Regulations would adversely impact foreign-invested insurers by narrowing their procurement options for China operations. This would increase costs and create interoperability problems with their non-China operations, ultimately reducing security and raising costs for Chinese consumers. Data localization requirements specified in the Draft Informatization Regulations would also have substantial anti-competitive effects on foreign-invested insurers. AmCham China urges clarifying the definition

息技术的要求、有关理赔、财务、新设分支机构合规负责人的规定等。商会呼吁银行保险监督管理委员会尽可能地简化程序从而降低保险公司的成本负担，并在制定合规要求时充分考虑这些成本负担。

## 最新进展

### 偿二代

2016年，中国保监会（现已整合并入中国银行保险监督管理委员会）开始正式实施中国风险导向偿付能力体系（C-ROSS）——中国第二代偿付能力监管体系（以下简称“偿二代”），并且正在通过各地保监局对保险公司偿二代合规情况实施检查。2017年9月18日，中国保监会发布“偿二代二期计划”，正式启动该项目二期工程。保监会（中国银行保险监督管理委员会）计划在三年内完成实施。然而，详细法规和准则尚未公布。

鉴于偿二代的广泛性和复杂性，银行保险监督管理委员会需要确保其各地委员会及委员会全体官员对规则能够做出一致的解读。规则解读的一致性和透明性对于保险公司正确、迅速地遵守偿二代规则的能力十分重要。

但是，规则的执行需坚持原则导向，符合国际保险监督官协会（IAIS）制定的保险监管核心原则，且不应“一刀切”。鉴于各家保险公司在规模、复杂程度、业务性质和所提供产品等方面存在很大差别，偿二代的实施应当考虑具体公司的业务性质。为促进偿二代能够顺利、统一地实施，关于偿二代具体规定的解释，商会期待有一项能让保险公司向银行保险监督管理委员会提交书面咨询，且能得到委员会书面公开声明作为回应的正式程序。商会相信银行保险监督管理委员会发布的公开解释将降低政策实施不一致的风险。

### 《网络安全法》

《网络安全法》于2017年6月1日实施。从那时起，政府已起草多项法规和标准以执行该法律，包括于2017年6月1日生效的《网络产品和服务安全审查办法（试行）》和《网络关键设备和网络安全专用产品目录（第一批）》最终稿；尚未确定的《关键信息基础设施安全保护条例》；《个人信息和重要数据出境安全评估办法》草案和与其配套的国家标准草案，《数据出境安全评估指南》草案和《个人信息安全规范》。国家互联网信息办公室负责引领实施和执行。

商会理解中国监管部门在管理新技术和解决网络安全问题方面所面临的诸多挑战。但是，这项法律及其相关草案措施和指南对跨境数据流加以过于广泛的限制，给在需要进行数据国际共享的行业中经营的中外企业造成阻碍。草案措施尤其将法律中规定的个人信息输出的安全评估和重要数据安全审查的范围从CII网络运营商扩大至几乎所有网络运营商。此外，法规草案和标准草案中确定或定义的“关键信息基础设施”、“关键信息”、“重要信息”和“适用监管”包含广泛的数据，行业和部门，远远超出国际规范。这将对从事涉及个人数据和跨境数据传输的业务的保险公司，尤其是外国保险公司，产生巨大的影响。商会认为，网络安全非常复杂，需要跨国合作。政策实施造成的后果将是，高昂的成本将超过带给消费者的任何利益。我们提请政府一方面重新考虑隐私和数据安全保护的平衡，另一方面最终敲定这些法规和标准，从而确保数据安全并促进技术创新的且不过度限制跨境数据传输。

### 中国银行保险监督管理委员会《保险机构信息化监管规定（征求意见稿）》

中国银行保险监督管理委员会正在考虑制定一份规范保险机构信息系统的新规，继2015年10月发布《保险机构信息化监管规定（征求意见稿）》（“规定”）之后，2016年4月已经将修改草案提交至世界贸易组织。该规定要求保险公司采购信息技术硬件和软件时优先考虑“安全可控”产品。

该规定将给外资保险公司造成不利影响，减少其在华运营机构的采购选择。这不仅会使成本增加，还会给与其他国家运营机构的协同操作带来问题，最终使其提供给中国消费者服务的安全降低和成本上升。有关数据本地化的要求也会给外资保险公司造成抑制竞争的不利影响。商会促请相关部门澄清“安全可控”的定义，以确保保险公司能够根据信息技术系统的安全性和可靠性而非国别来选择供应商和技术提供商。

### 《保险公司合规管理办法》

2017年1月，保监会正式发布《保险公司合规管理办法》（以下简称“办法”）。办法保留了现有的对保险公司总公司应当设立专门的合规部门的要求，并将这一要求扩大到省级分公司。与2016年10月的草案相比，该办法的最终稿有一些改进，例如，删除了保险公司专职合规人员的最低人数要求（至少占总公司员工总数的3%，每个

of “secure and controllable” to ensure that insurers retain the discretion to decide among different vendors and technology providers on the basis of security and reliability of IT systems, not on national origin.

### ***“Measures for Insurance Company Compliance Management”***

CIRC officially released the “Measures for Insurance Company Compliance Management” (the Measures) in January 2017. The Measures retained the existing requirement imposed on an insurance company head office to set up dedicated compliance departments and extended it to include provincial branches. The final Measures represented some improvement from the October 2016 draft, including deletion of the clause requiring that insurers maintain a minimum number of compliance staff (at least three percent of headcount in the head office and at least two persons in each provincial branch). AmCham China welcomes such improvement. However, the Measures lack implementation details for insurers to set up compliance departments in provincial branches, which will make it more difficult for insurers to adjust their personnel structure. AmCham China recommends that CIRC further clarify relevant requirements before the Measures take effect on July 1, 2017.

### ***Transparency and Level Playing Field***

In 2016, AmCham China observed that CIRC frequently published regulations for comment involving foreign investment without allowing the minimum 30-day comment period to which the Chinese government has committed. AmCham China urges CIRC to comply with this requirement and generally be more transparent with respect to regulatory developments.

While AmCham China recognizes several regulatory advances, we remain disappointed by the persistence of barriers to market entry and expansion that foreign-invested insurers face. Domestically-invested insurers and insurance brokerages, particularly larger companies, continue to enjoy more regulatory favor with respect to ownership structure and access to capital, allowing them to benefit at the expense of foreign-invested insurers and to the disadvantage of consumers.

Consequently, foreign-invested insurers have generally lost market share in China despite a modest uptick last year. As of year-end 2016, the market share of foreign-invested insurers stood at a mere 5.09 percent, down from six percent in 2004 and up only slightly from 4.46 percent in 2014. The decline in life insurance has been particularly sharp, falling from 8.9 percent in 2005 to 5.8 percent in 2014 before increasing modestly to 6.4 percent in 2016. Even the largest foreign-invested life insurer’s market share is less than two percent. The market share of foreign-invested property and casualty companies, which were previously excluded from the mandatory third-party liability insurance market, continued to barely register at 2.04 percent in 2016. Foreign-invested

health and pension insurers continue to be excluded from the market altogether.

## **Recommendations**

### ***For the Chinese Government:***

#### ***Ownership***

- **Remove all foreign own-ership caps on insurance companies and intermediaries.**
- Allow insurance asset management companies to be established by a single founding shareholder in accordance with the Company Law.

#### ***Sales and Service Channels***

- Further open the Internet insurance channel by allowing more types of insurance products, including critical illness products, to be sold online nationwide.
- Put into practice the review and approval of branch applications by foreign-invested insurers in the same manner and at the same pace as applications by domestically-invested insurers.

#### ***Licenses***

- Increase competition in pension and health insurance by licensing foreign-invested applicants.
- Level the playing field for brokerages by removing restrictions on foreign-invested brokerages.

#### ***Tax Issues***

- Correct the heavier tax burden on insurance companies as a result of VAT reform.
- Expand tax incentives for tax-deferred annuities.

#### ***Structural***

- Clarify key definitions in China’s Cybersecurity Law and review the effectiveness of the measures in the law.
- Clarify the definition of “secure and controllable” in CIRC’s “Draft Informatization Regulations” and give insurers the discretion to decide among different vendors on the basis of security and reliability of IT systems, not national origin.
- Clarify and elaborate requirements on the compliance function of insurers’ provincial branches.
- Remove unnecessary capital charges and collateral requirements on cross-border reinsurance transactions.

省级分公司至少有2名专职合规人员)。商会对此表示欢迎。但是,办法没有说明保险公司在省级分公司设立合规部门的实施细则,使得保险公司越发难以调整自身的人员结构。商会建议中国银行保险监督管理委员会在该办法2017年7月1日生效实施之前对此进行进一步说明。

### **透明和公平竞争的环境**

商会在2016年观察到,保监会(现中国银行保险监督管理委员会)经常发布涉及外商投资的新法规征求意见稿,但未能坚守中国政府承诺的向社会广泛征求意见的30天期限规定。商会呼吁中国银行保险监督管理委员会能够遵守这一30天期限规定,并进一步提高监管动向披露的透明度。

商会认可中国监管工作取得的进步,但商会对外资保险公司依然面临的市场准入和业务拓展障碍感到失望。内资保险公司和内资保险经纪公司,尤其是大型保险企业,仍然在损害外资保险公司和消费者的利益的基础上,因其在所有权结构和资本运作方面享有更多监管优惠而受益。

在这样的政策环境下,尽管去年外资保险公司在华市场份额略有提升,但其市场份额的总体趋势却是日渐萎缩。截止2016年底,外资保险公司在华市场份额仅为5.09%,比2004年的6%有所下降,仅比2014年的4.46%略有上升。人寿保险市场份额下降尤其严重,从2005年的8.9%跌至2014年的5.8%,2016年略有增长,为6.4%。即使是在中国规模最大的外资人寿保险公司,其市场份额也不足2%。以前不允许外资财产和意外险公司参与开展机动车第三方责任险业务,现在获准经营之后,2016年市场份额也仅为2.04%。目前,外资健康保险和养老保险公司仍无法进入中国市场。

## **建议**

### **对中国政府:**

#### **所有权**

- 取消所有外资股东在寿险公司及其附属机构中持股的上限规定。
- 依照《公司法》规定,允许单一发起人股东设立保险资产管理公司。

### **销售和服务渠道**

- 进一步开放互联网保险销售渠道,允许包括重大疾病保险产品在内的更多类型的保险产品可以通过互联网在线进行全国性销售。
- 外资保险公司申请设立分支机构时,确保在审批手续和审批进度上享受与内资保险公司同等的待遇。

### **牌照**

- 通过向外资公司发放经营牌照,提高养老保险和健康保险的市场竞争。
- 取消对外资保险经纪公司的限制,为保险经纪提供公平竞争的环境。

### **税务问题**

- 解决增值税改革给保险公司造成的税负加重的问题。
- 扩大个税递延型养老保险的税收优惠的范围。

### **监管结构**

- 明确《网络安全法》中的重要定义,审查该法所规定的措施的有效性。
- 明确中国银行保险监督管理委员会对《保险机构信息化监管规定(征求意见稿)》中关于“安全可控”的定义,允许保险公司根据信息技术系统的安全性和可靠性而非国别来选择供应商。
- 明确对保险公司省级分公司合规部门的具体要求。
- 取消对跨境再保险交易实施的不必要的资本费用和担保要求。



# Legal Services

## Introduction

**F**oreign law firms face a wide range of market access constraints in mainland China, especially: ❶ restriction of their organizational form to representative offices, albeit income-earning representative offices; ❷ inability for PRC-qualified lawyers to maintain their licenses, preventing the firms from providing comprehensive legal services to their clients; ❸ prohibitions against participation in important meetings at government departments involving their clients; ❹ discriminatory taxation; and ❺ unnecessarily slow, complicated, and unpredictable registration process for the establishment of offices.

The Chinese government's continued restrictions in this sector significantly limit the options available to mainland Chinese and foreign companies seeking legal advice and counsel, and deprive PRC-qualified lawyers of the opportunity to work for, receive training in, and become principals of foreign law firms. Moreover, the current restrictions are inconsistent with international best practices and result in the unwillingness of many foreign investors and parties to financial transactions to accept Chinese law as the governing law of contracts, or to submit themselves to the jurisdiction of Chinese courts or arbitration tribunals for dispute resolution. These restrictions also conflict with the general principle of reciprocity, given that most of China's major trading partners allow PRC law firms to establish full service offices in their jurisdictions.

## Ongoing Regulatory Issues

### *Burdensome Representative Office Registration*

Foreign law firms face burdensome regulatory approval procedures not applicable to PRC law firms. When applying to establish a representative office, a foreign law firm must demonstrate "a need to establish a representative office to start legal service operations." Authorities evaluate such need based in part on the "social and economic development conditions" of the proposed location and the "development needs" for legal services in the location. These and other similarly vague and burdensome considerations are seemingly inconsistent with China's WTO commitment to

eliminate geographic and quantitative limitations on the number of representative offices that foreign law firms can establish in mainland China. The requirement to demonstrate this need unnecessarily and unreasonably lengthens the approval process for a representative office by up to nine months. Moreover, the length of the approval process is unpredictable and often subject to protracted delays. The application process for establishing an office can and should be substantially streamlined.

Furthermore, a foreign law firm must wait three years after establishing a representative office before opening an additional office, which limits its growth. Foreign law firms have reported substantial difficulties and delays in the processing of these applications as well. This restriction impairs the ability of foreign law firms to serve clients in interior provinces, which are a key priority of the central government in its efforts to boost economic development.

Moreover, foreign law firms, unlike domestic PRC law firms, are limited to two offices in China, which further impedes their ability to service client needs in China.

### *Limited Scope of Practice for PRC-Qualified Lawyers in Foreign Firms*

AmCham China continues to urge the Chinese government to revise current regulations to allow international law firms to hire and admit to their partnerships qualified PRC lawyers with active PRC licenses, in order to offer comprehensive legal services to their clients. Removing the prohibition against this would lead to the following:

- New training and future employment opportunities for mainland Chinese law students and lawyers, which would in turn expand the pool of trained and experienced PRC-qualified lawyers available to PRC law firms and companies to hire as counsel or in other positions requiring specialized legal backgrounds.
- Chinese companies would be able to expand more efficiently and successfully by enabling integration of their China counsel into their worldwide team of legal specialists.
- An increase in foreign law firms' capacity to represent clients doing business in mainland China, as well as

# 法律服务

## 引言

**外** 国律师事务所在中国大陆面临着诸多市场准入限制，重点包括：① 尽管收入所得代表处，但其组织形式限于代表处；② 中国合格的律师无法保留其执照，从而影响律所向其客户提供全面的法律服务；③ 不允许出席客户与政府部门之间的重要会议；④ 差别性的税收政策；⑤ 成立代表机构的注册手续过于繁杂，过程漫长而且结果难以预料。

中国一直在上述领域对外国律师事务所进行限制，这不仅严重阻碍了中国内地企业和外国企业获得高度专业化的法律意见和咨询服务的机会，更剥夺了中国执业律师在外国律师事务所工作、接受培训并获得升迁的机会。除此之外，现有的限制也不符合国际最佳实践，导致许多外国投资者和金融交易各方既不愿意使用中国法律作为合同的适用法律，也不愿意选择中国法庭或仲裁庭解决争端。这些限制还有违互惠原则，因为大多数中国的主要贸易伙伴国都允许中国律师事务所在其境内设立提供全面服务的分所。

## 现存监管问题

### 代表处注册程序繁琐

外国律师事务所面临比中国律师事务所更为繁琐的监管审批程序。外国律师事务所在申请设立代表处时，必须证明其“设立代表处从事法律服务业务的必要性”。相关政府部门在评估其必要性时，通常会考虑拟设立地的“社会经济发展情况”和对法律服务的“发展需求”。这些以及其他类似的模糊而繁琐的因素，可能违反了中国在世界贸易组织下有关消除外国律师事务所在中国大陆设立代表处的地域和数量限制方面的承诺。如按此要求，审批流程可能延长至9个月之久，这是不必要且不合理的。此外，审批时间难以预料，通常久拖不决。设立代表处的申请程序可以而且应该进行大幅度地简化。

此外，外国律师事务所设立一个代表处之后，必须等待至少三年才能再增设新的代表处，这种规定限制了外国律师事务所的发展。外国律师事务所均表示在该类申请过程中遭遇了重重困难和拖延现象。内陆省份是中国政府提出的重点经济发展区域，这些限制损害了外国律师事务所为内陆省份客户提供服务的能力。

而且，与国内的中国律师事务所不同的是，外国律师事务所在中国只能设立两个办事处，这进一步阻碍了其在中国服务客户需求的能力。

### 中国律师在外国律师事务所的执业范围受限

中国美国商会（商会）继续促请中国政府修订现行法规，允许外国律师事务所雇用持有有效中国律师执业证的中国律师，为客户提供全面的法律服务。取消这一限制将：

- 在相当程度上扩大中国法律专业学生和律师接受新的培训和未来就业的机会，从而增加训练有素且经验丰富的中国执业律师的数量，使得中国律师事务所和公司能够雇用这些律师担任法律顾问或其他需要法律专业背景的职业。
- 允许中国公司将中国的法律顾问和由法律专家组成的国际团队进行整合，从而更加有效和成功地进行公司扩张。
- 提高外国律师事务所在中国内地代表客户开展业务的能力，协助中国公司寻求扩大全球业务与投资活动的机会。

### 外国律师参与政府会议受限

商会促请中国政府履行其在2014年第25届中美商贸易联委会上做出的承诺，即按照通行的做法，允许外国律师事务所驻华代表处的代表应相关方的要求参与三大反垄断执法机构的会议。商会也促请中国政府的所有执法部门在其他法律领域也履行这一承诺。

Chinese companies looking to expand their global commercial and investment activities.

### ***Restricted Appearance Before Government Agencies***

AmCham China urges the Chinese government to implement its commitment made in 2014 at the 25th Joint Commission on Commerce and Trade (JCCT). This involves allowing representatives of foreign law firms' representative offices established in China to attend and participate in meetings with each of the three anti-monopoly enforcement agencies upon request from the party involved. AmCham China further urges the Chinese government to implement this commitment across all government enforcement agencies in other areas of law.

Presently, appearance and participation by foreign lawyers in many types of meetings involving their clients and mainland Chinese government departments is often prohibited, restricted, or permitted only conditionally on a non-transparent and case-by-case basis. This lack of clear and consistently enforced regulations results in the following:

- Both foreign and Chinese clients are deprived of adequate representation in meetings relating to areas of non-Chinese law.
- Clients are prevented from determining the composition of their own legal teams in meetings with Chinese government officials.
- Clients' ability to understand government proceedings in their international context becomes limited.
- There is a limited quality of information clients can provide to mainland Chinese government officials relating to the clients' activities and obligations in China and abroad.
- An uneven playing field is created.
- There is an impression that the Chinese government may engage in arbitrary and discriminatory treatment in dealings with foreign companies.
- It frustrates the right of international law firms to advise foreign and Chinese clients on the impact of the Chinese legal environment, yet this right is clearly established in China's Protocol of Accession to the World Trade Organization (WTO) as well as in State Council regulations.

To the best of our knowledge, no other leading economy limits, restricts, or permits such inconsistent, non-transparent access for foreign lawyers to government officials.

### ***Discriminatory Taxation***

Representative offices of foreign law firms are subject to higher PRC income taxation than PRC law firms carrying out the same activities because foreign law firms are denied

the status of partnership enterprises for PRC tax purposes (for more details please see the *2015 White Paper*). In addition, foreign firms are denied the preferential tax calculation method granted to PRC law firms that significantly decreases domestic firms' effective income tax rate.

To address this inequity and comport with the principles of non-discrimination in the US-China bilateral tax treaty, AmCham China recommends that the Chinese government provide international law firms with treatment equivalent to that of PRC law firms for PRC income tax purposes.

### ***Other Market Access Problems***

Foreign law firms also face other restrictions that impair their ability to operate in China. These include: ❶ an unnecessarily difficult process to replace the chief representative of a firm and for foreign lawyers to transfer firms; ❷ an inability to, or difficulty in, hiring foreign non-legal professionals; ❸ the one-year limit on the duration of work visas for foreign lawyers (including chief representatives); and ❹ protracted (sometimes up to a year and a half) work permit application procedures.

We encourage the Chinese government to address these issues in order to improve foreign law firms' ability to serve their foreign and domestic clients effectively in China.

### ***Foreign Investment Catalogue Restrictions***

In the latest "Catalogue of Industries for Guiding Foreign Investment" (Negative List for Foreign Investment) effective in July 2017, "consulting on Chinese legal matters" continues to be classified as "prohibited." However, it was classified as "restricted" in the 2011 version Catalogue. The provision of information regarding the impact of Chinese laws is nevertheless permitted in accordance with China's commitments in the 2001 Protocol on the Accession of the PRC to the WTO. It does not, however, address the need for further liberalization of access for foreign law firms and their Chinese national lawyers, as discussed in this chapter.

## **Recent Developments**

### ***Progress Regarding Legal Services in the Pilot Free Trade Zones***

Some positive developments have been pursued within Shanghai's Pilot Free Trade Zone (PFTZ). This includes the November 2014 "Implementing Measures of the Shanghai PFTZ for the Mutual Assignment of Lawyers as Legal Consultants by Chinese and Foreign Law Firms," and the "Implementing Measures of the Shanghai PFTZ for Joint Venture Operations Between Chinese and Foreign Law Firms." (See the 2015 White Paper for more details on these measures.)

目前，中国通常会禁止、限制、根据个案或在透明的基础上有条件地允许外国律师出席和参与客户与中国政府部门之间举行的很多会议。这方面缺乏明确且一致的规定将：

- 导致外国和中国客户在上述会议中无法就非中国法律问题充分阐明自己的观点和立场。
- 妨碍了客户自主选择法律团队成员参与中国政府官员进行会谈的权利。
- 限制了客户在国际环境下理解政府程序的能力。
- 影响了客户向中国政府官员提供的其在中国及境外活动和义务等相关信息的质量。
- 造成了不公平的竞争环境。
- 容易给外界造成中国政府可能武断地、区别地对待外资企业的印象。
- 妨害了外国律师事务所向中外客户就中国法制环境提供咨询的权利——而这一权利已经明确写入了中国人世承诺以及中国国务院的相关法规。

据了解，全球其他主要经济体中都没有上述限制和局限或者仅在不统一、不透明的基础上允许外国律师会见政府官员。

### 差别性税收

与从事相同业务活动的中国律师事务所相比，外国律师事务所代表处在中国缴纳的所得税更高，这是因为中国目前不承认外国律师事务所在税法上的合伙企业地位（详情见2015年《白皮书》）。另外，外国律师事务所也不享受中国律师事务所所享受的优惠税收计算方法，这一计算方法能够大幅降低中国律师事务所的实际所得税税率。

为解决这种不公平现象并与《中美税收协定》中的各项非歧视性原则保持一致，商会建议中国政府在中国所得税征收方面应当给予外国律师事务所与中国律师事务所同等的待遇。

### 其他市场准入问题

外国律师事务所还面临很多其他限制，这削弱了他们在中国的执业能力。其中包括：① 律所首席代表变更和外国律师变换其任职律所时所需履行的程序过于繁杂；② 不能或难以聘用外籍非法律专业人士；③ 外国律师（包括首席代表）工作签证的有效期只有一年；④ 取得工作许可的时间相对较长（有时甚至需要一年半的时间）。

商会促请中国政府解决上述问题，从而提高外国律师事务所为在华中外客户提供高效服务的能力。

### 《外国投资目录》的限制

2017年7月发布的《外商投资产业指导目录》（《外商投资负面清单》）继续将“中国法律事务咨询”列入“禁止”清单，而在2011版的《指导目录》中，这一项是列在“限制”清单中。中国于2001年加入世贸组织时承诺允许提供有关中国法律影响的信息服务，然而这不能满足本章谈到的外国律所及其中国籍律师对于进一步放开准入的需求。

## 最新进展

### 自由贸易试验区开放法律服务市场的些许进步

中国（上海）自由贸易试验区已经实施了一些积极举措（例如，2014年11月上海市政府发布的《中国（上海）自由贸易试验区中外律师事务所互派律师担任法律顾问的实施办法》和《中国（上海）自由贸易试验区中外律师事务所联营的实施办法》（详见2015年《白皮书》）。

2015年4月以来，三家设在上海自贸区的中外联营律师事务所已经获得上海市司法局的批准。但是，联营事务所的日常经营仍然面临各种困难。例如，联营事务所在设立一年以后才能开立自己的银行账户

### 北京的潜在新动向

2017年7月，国务院下发了“关于深化改革推进北京市服务业扩大开放综合试点工作方案”的批复”。该批复鼓励中国律师事务所和外国律师事务所探索在北京合作的方式，但尚未提供进一步的说明或措施。

此外，律师事务所在合资企业方面的国际经验表明，这种模式在大多数司法管辖区并不成功。像任何企业一样，律师事务所在独立运作时经营得最好。

## 建议

本章所讨论的大部分问题商会已经提出了好几年，但这些问题在很大程度上仍然存在。商会仍然希望中美两国政府加强对这些问题的关注，这将进一步打开中国的法律服务市场，商会认为这最终符合中

Since April 2015, several Sino-foreign joint-venture operation law firm offices in the Shanghai PFTZ have been approved by the Shanghai Bureau of Justice. However, the daily operation of the joint venture offices continue to encounter various difficulties. In one case, the joint venture had to wait one year before being granted approval to open its bank account.

### *Potential New Movements in Beijing*

In June 2017, the State Council issued its “Approval Regarding the Working Plan on Further Reforming and Comprehensive Trial Opening-up of the Service Industry in Beijing Municipality.” The Approval encourages PRC law firms and foreign law firms to explore ways to cooperate in Beijing. However, no further clarification or action has been provided.

In addition, law firms’ international experience with joint ventures indicates that such model has not been successful in most jurisdictions. Like any business, law firms operate best when they can operate independently.

tering and transferring representatives, extend the duration of visas for representatives, and decrease work permit approval times.

#### *For the US Government:*

- **Negotiate with China to revise current regulations, in order to allow international law firms in China to enjoy the same benefits as Chinese law firms operating overseas.**

## Recommendations

Most of the issues addressed in this chapter have been raised by AmCham China for several years but the barriers largely persist. We continue to hope that increased attention to these issues by both governments will further open the Chinese legal services market as we believe it is ultimately in China’s interest to establish international markets for services. At the same time, we caution against requiring foreign lawyers to subscribe to political oaths as required of Chinese lawyers.

#### *For the Chinese Government:*

- **Revise current regulations to allow foreign law firms to hire and admit to their partnerships PRC-qualified lawyers without requiring them to suspend their PRC lawyer’s license when they join a foreign law firm.**
- Clearly state in regulations that foreign lawyers are permitted to participate in all meetings between their clients and Chinese government departments.
- Simplify the requirements, eliminate the unpredictability, and reduce the review period for the establishment of foreign law firms’ representative offices, as well as the opening of additional offices.
- Provide foreign law firms with treatment equivalent to that of PRC law firms for PRC income tax purposes.
- Allow foreign law firms to hire foreign non-legal professionals, improve the procedures for regis-

国建立国际服务市场的诉求。同时，商会建议不要要求外国律师认同中国律师所要求的政治誓言。

#### **对中国政府：**

- 修改现行法律法规，允许外国律师事务所雇用中国执业律师并任用其为合伙人，不再要求中国执业律师在加入外国律师事务所时放弃执业证。
- 在相关法规中明确允许外国律师参与客户与政府部门间的所有会议。
- 简化设立代表处的要求，消除不可预测性因素，缩短设立代表处及开设新代表处的审核时间。
- 在征收中国所得税方面，为外国律师事务所提供与中国律师事务所同等的待遇。
- 允许外国律师事务所聘请外籍非法律专业人士，改进代表的注册及调动程序，延长代表的签证有效期，缩短工作许可的审批时间。

#### **对美国政府：**

- 与中方进行谈判以修改其现行法律法规，给予在华外国律师事务所与中国律师事务所海外分支机构所享有的同等待遇。

# Machinery Manufacturing

## Introduction

China's machinery industry is one of the major sectors of the national economy and has seen increased growth in the past few years as markets recovered. Under the Made in China 2025 policy, the government intends to upgrade the industry so that higher-end manufacturers can compete at the global level. There are stated goals to increase the domestic content of core components and materials to 40 percent by 2020 and 70 percent by 2025. These present a number of commercial opportunities to support national policy. Nevertheless, certain aspects of current policies continue to be challenging for foreign companies.

On one hand, China deserves credit for its transparency in stating its domestic content goals. However, those same domestic content goals can be interpreted as protectionist and run counter to the concept of national treatment under the country's WTO commitments, as it is unclear to what extent foreign firms manufacturing in China will be considered "domestic."

In this industrial sector, there has been relatively slow progress in resolving issues noted in the *2017 White Paper*, such as the timing of the implementation of certain regulations, and differing tax structures for firms in the financial leasing industry. As is often the case, part of the problem is inconsistent policy implementation, which is likely due to inter-agency coordination issues between different ministries and local governments. We hope that the relevant authorities will consider the issues discussed in this document, and devise reasonable solutions predicated on the principle companies enjoy a level playing field.

## Ongoing Regulatory Issues

### *Environmental Compliance*

In response to the growing pressure to address environmental protection, the Chinese Government has been taking very aggressive action to control air pollution this year. In some areas, the government force companies to shut down production lines when air is heavily polluted, regardless of

whether these facilities are in compliance with air pollution emissions requirements. AmCham China generally supports the Chinese government's efforts to improve air quality but believes that penalizing all companies in accordance with the "one-cut implementation" is unfair to law-abiding enterprises, and discourages the industry from undertaking environmental improvement. We urge the Chinese government to be consistent and transparent in the implementation of its air pollution control policy to ensure the normal operation of the machinery manufacturing industry.

### *Off-Road Emissions Regulation*

The Chinese government has been working on upgrading air pollution emissions regulation for off-road machines in the past few years. To lay the groundwork for the improvement, it announced a nationwide prohibition on the supply of diesel with sulfur content above 10ppm, effective November 1, 2017. However, the diesel quality in many regions, particularly remote regions, remains below the standard level. Diesel with higher sulfur content increases the failure rate of engines and brings great challenges to emissions control. We urge the Chinese government to secure the nationwide supply of diesel with lower sulfur content, and to take effective supervisory measures to ensure its quality.

China is working on drafting the "Non-Road Diesel Engine Tier IV Emission Regulation" (Tier IV) by quoting standards of different levels taken from Europe Stage IV between 3b and 5 and from US Tier IV. Although drawing the best stipulations from existing standards helps to avoid shortcomings, outlining different requirements based on different standards presents great challenges for industry compliance and creates unnecessary export barriers. AmCham China supports international regulatory harmonization to ensure consistent treatment of engine products in accordance with the international nature of the engine manufacturing industry, promote a level playing field in the global marketplace, avoid unnecessary costs, and minimize the potential for localized limitations on product offerings.

As to the timing of Tier IV implementation, AmCham China holds that the effective date for the construction machinery industry should be no earlier than January 1, 2021 to give the relevant parties sufficient time for preparation.

# 机械制造业

## 引言

**中** 国机械行业是国民经济的主要行业之一，过去几年随着市场的复苏，中国机械行业增长速度加快。在《中国制造 2025》政策下，政府计划行业升级，帮助高端制造商在全球范围内竞争。既定目标是到 2020 年将核心部件和材料的自主保障提高到 40%，到 2025 年增加到 70%。这就创造了大量为支持国家政策的商业机会。然而，当前政策的某些方面仍对外国公司构成挑战。

一方面，中国在阐明其自主保障目标方面的透明度值得赞扬。然而，这些自主保障目标也可以被解读为保护主义，这违背了中国在 WTO 承诺的国民待遇的概念，因为目前还不清楚在中国制造生产的外国公司在多大程度上会被视为“国内企业”。

在该产业领域，2017 年白皮书中所提到的问题解决进展相对缓慢，例如实施某些条例的时机，以及融资租赁行业公司不同的税务结构。通常情况下，问题是政策执行不一致，可能是由于不同部委和地方政府间的机构间的协调问题。我们希望有关部门能够审议本文件所讨论的问题，并为所有公司制定合理的解决方案，以创造公平的环境。

## 现存监管问题

### 环保合规

为了应对日益增长的环境保护压力，中国政府在近一年采取了强有力的措施来控制空气污染。在一些地区，无论作业设施是否符合空气污染排放要求，政府都勒令企业在空气严重污染时关闭生产线。中国美国商会（商会）支持中国政府努力改善空气质量，但也认为处罚所有公司对守法企业不公平，不利于企业改善环境。我们促请中国政府在实施空气污染控制政策时保持一致性和透明性，以确保机械制造业的正常运行。

## 非道路排放法规

过去几年，中国政府一直在致力于规范非道路机械空气污染排放法规。为改善这一状况，政府宣布全国范围禁止供应含硫量超过 10ppm 的柴油，该禁令已于 2017 年 11 月 1 日生效。然而，许多地区，特别是偏远地区的柴油质量仍然低于标准水平。含硫量较高的柴油会增加发动机的故障率，给排放控制带来很大的挑战。商会促请中国政府确保全国范围内供应较低含硫量的柴油，并采取有效监督措施，确保柴油质量。

中国正在起草的《第四阶段非道路移动机械用排气污染排放标准》（第四阶段）引用了不同级别的标准，参考了欧洲 3b 和 5 之间的第四阶段和美国的第 4 阶段。虽然学习现有最先进的规定有助于规避不足，但是基于不同标准的不同要求为行业合规带来了巨大挑战，也带来了不必要的出口障碍。商会支持国际标准一致化，以确保发动机产品特性与国际发动机制造行业保持协调一致，在全球市场促进公平竞争，避免造成不必要的成本，并尽可能降低产品供应的局限性。

至于《第四阶段》的实施，商会认为，对于低于 560kw 的发动机或非道路移动设备，实施时间不应早于 2022 年 1 月 1 日，即晚于道路车辆第六阶段排放法规的实施。对于高于 560kw 的发动机或非道路移动设备不早于 2024 年 1 月 1 日实施，或者在制定更严格的固定源用发动机排放标准之前，对功率大于 560kW 的非道路柴油机维持国三排放标准，以便给相关方足够的时间准备。

商会进一步建议《第四阶段》应包括防篡改设计要求，以防止制造商改变排放控制。

在《第四阶段》生效后，商会促请严格持续执行该政策，以确保整个行业的公平竞争环境。对于《第四阶段》中没有明确表述的内容或情况，应提供指导方针以避免发生含糊不清的情况，防止主观解读。



We further urge that Tier IV include an anti-tamper design requirement for manufacturers to prevent alteration of emission controls.

After Tier IV becomes effective, AmCham urges strict and consistent enforcement to ensure a level playing field for the whole industry. For points or situations not clearly stated in Tier IV, there should be guidelines provided to avoid ambiguities and minimize subjective interpretation.

### *Marine Engine Emissions*

Emissions from main engines and auxiliary engines on inland and offshore vessels have a significant impact on the atmospheric environment. To achieve the goals of “Made in China 2025” and fulfill the Chinese government’s carbon dioxide emissions reduction commitment in the Paris Climate Agreement, we urge the government to set mandatory emissions standards for vessels on inland waterways and for marine transport, and should set a compliance timetable accordingly. Mandatory standards and timetables can enhance environmental protection and promote innovation in the domestic marine engine industry, providing additional impetus for the engine manufacturing industry.

Regarding engine testing for R&D purposes, however, we would suggest the Chinese government implement less stringent emissions control requirements. Product testing is carried out under a variety of operating conditions for long periods of time, and in most cases emissions fail to meet strict standards. However, this is unavoidable in new product development. Strict inspection of emissions in testing procedures is therefore not conducive to R&D operations.

In August 2016 the Ministry of Environmental Protection (MEP) and the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) jointly issued “The Emission Limits and Measurement Methods of Marine Engine Exhaust Pollutants (Phase One and Phase Two) of China,” effective July 1, 2018. We urge publication of guidelines for emissions certification applications, as well as a clear description of the roles and responsibilities of MEP and the China Classification Society (CCS).

### *Clean Energy Machinery*

Distributed energy (DE) and combined heat and power (CHP) systems have been some of the most significant trends in energy reform. AmCham China recommends that the Chinese government focus on developing small- and medium-sized (less than 50 MW) and multiple-unit DE and CHP systems in industrial and commercial areas, in order to ensure high system operation reliability and efficiency (above 70 percent annual average). In the interim, AmCham China urges faster development of DE and CHP power grid connection regulations through increased support from local utility companies. Such regulations would encourage both the central and local governments to provide incentives to

promote DE and CHP deployment. These may include lower gas prices, tax credits, low interest loans, and subsidization of a project’s initial capital cost. AmCham China urges the Chinese government to promote gas-fired DE and CHP applications in coal-to-gas boiler replacement initiatives as one of the most effective technologies for reducing smog.

Small municipal waste and coal integrated gasification combined cycle systems (IGCC) use newly developed technology that significantly reduces dioxin, ash, and PM 2.5 emissions. AmCham China recommends that the Chinese government increase research on IGCC technology and develop preferential policies to encourage the application of this technology.

### *Remanufacturing*

China’s remanufacturing industry has seen fast development with government support in the past few years. To ensure the sector’s healthy development, AmCham China urges the Chinese government to increase monitoring and supervision related to the quality of remanufactured finished goods (RFG), particularly RFGs which are not produced by the original manufacturers.

The quality of RFGs should be equal to or exceed that of new products. Similarly, the quality guarantee of RFGs should also be the same as new products. It is critical to clarify this precondition in the definition of RFG, in order to differentiate it from “refurbished” and “second-hand” goods. Given this, the Chinese government could consider allowing RFGs to be used as replacement components on machines and automobiles during a warranty period.

In 2018, we look forward to progress in allowing free, cross-border flow of RFGs and cores (material that is to be remanufactured). We anticipate that the Chinese government will implement a value-added tax (VAT) exemption for cores recycled in a more simplified process, which would benefit the development of the Chinese remanufacturing industry.

### *Mining*

In order to maintain the coal industry’s robust development, the Chinese government has prioritized production upgrades and safety improvements. Embracing mechanization and international best practices will help make China’s coal industry safer, more efficient and more sustainable. Foreign-invested machinery manufacturers have valuable experience in producing safe, high-quality, and advanced technology. Closer cooperation between international and domestic players can improve mine safety, efficiency, and sustainability.

Methane explosions are a major hazard in the coal mining industry. Moreover, methane is a major contributor to global climate change. According to the Ministry of Land and Resources, China ranks third internationally in terms of its

## 船用发动机排放

内陆和近海船舶的主发动机和辅助发动机的排放对大气环境有显著影响。为实现《中国制造 2025》的目标，实现《巴黎气候协定》中中国政府二氧化碳减排承诺，商会促请政府制定强制性的内河航道和海洋运输排放标准，并制定相应的合规时间表。强制性标准和时间表可加强环境保护，促进国内船舶发动机行业的创新，为发动机制造业提供额外的推动力。

然而，对于用于研发的发动机测试，我们建议中国政府放宽排放控制要求。产品测试需要在各种操作条件下进行很长时间，在大多数情况下，排放无法满足严格的标准。然而，这在新产品开发过程中是不可避免的。因此，严格要求测试过程中的排放不利于船用发动机的研发。

2016 年 8 月，环境保护部（环保部）和国家质量监督检验检疫总局（国家质检总局）联合发布了《中国海洋发动机排放污染物（第一阶段和第二阶段）的排放限制和测量方法》，于 2018 年 7 月 1 日生效。我们希望发布排放许可申请指南，并明确说明环保部和中国船级社（CCS）的职责和分工。

## 清洁能源机械

分布式能源（DE）热电联产系统（CHP）一直是能源改革最重要的趋势之一。商会建议中国政府在工业和商业领域重点发展中小型（低于 50 兆瓦）和多机组分布式能源热电联产系统，以确保系统运行具有高度的可靠性和效率（年平均 70% 以上）。在此期间，商会希望中国加快制定分布式能源热电联产系统的电网接入管理条例，加大对地方公用事业企业的支持。上述条例应当鼓励中央和地方政府通过各种激励措施促进分布式能源热电联产系统的部署，包括较低的燃气价格、税收减免、低息贷款和项目启动资本补贴等措施。我们促请中国政府在煤改气锅炉改造过程中，推动燃气分布式能源热电联产系统的应用，从而有效地减少雾霾。

小型城市垃圾和小型整体煤气化联合循环发电系统（IGCC）采用最新的 IGCC 技术，能够大大减少二恶英、烟尘和 PM2.5 的排放。商会建议中国政府进一步研究 IGCC 技术，制定优惠政策鼓励采用这一技术。

## 再制造产业

过去几年，中国的再制造产业得到了政府的大力支持。为了确保该行业的健康发展，商会促请中国政府加大对再

制造成品质量（RFG）的监控和监管力度，尤其是对非原始生产商生产的再制造成品质量的监管。

再制造成品应当具有与新产品相同或更好的质量，并享有和新产品一样的质量保障。明确再制造成品的这一标准非常重要，是将其与“翻新”和“二手”产品区别开来的重要指标。鉴于此，中国政府可以考虑允许再制造成品在保修期内用作机械和汽车的替代部件。

我们期待 2018 年中国允许旧件（材料用于再制造）和再制造成品自由跨境流通。我们促请中国政府简化对毛坯件免征增值税的流程，推动中国再制造产业的发展。

## 采矿业

为了保持煤炭行业的健康发展，中国政府确定了产品升级和安全改进的重点。推广机械化和国际最佳实践，将有助于中国打造一个更加安全、更具效率也更可持续的煤炭产业。外资机械制造商在提供安全、优质、先进的技术方面，具有宝贵的经验。国内外机械制造商进一步深化合作，有助于提高采矿的安全性、效率和可持续性。

瓦斯爆炸是一种重大的煤矿安全事故，同时瓦斯也是全球气候变化的重要诱因之一。国土资源部的数据显示，中国煤田深度低于 2000 米的煤层气 / 煤矿瓦斯资源储量位居世界第三。发电是一种理想的煤层气 / 煤矿瓦斯利用方式。但是鉴于煤层气 / 煤矿瓦斯抽采和生产成本高昂，商会促请中国政府考虑进一步改革相关补贴政策，提升矿山安全作业并减少对环境的不利影响。

## 设备融资租赁

融资租赁服务一直被视为一种有效的融资方式，能够帮助客户获得扩大生产所需要的更高效的生产设备，从而推动经济增长。发达国家市场上购买设备用于融资租赁的比例约为 15%—30%，而在中国，这一比例却不到 5%。进一步改革和统一相关政府部门制定的租赁法规，将有助于提高这一比例。

信用记录对于筛选潜在承租人十分重要。2015 年，中国人民银行发布《中国人民银行征信中心关于调整企业征信系统机构接入流程有关事项的通知》，允许融资租赁企业接入中国人民银行的征信系统，商会对此表示赞赏。然而，一些城市进展缓慢，没有采取切实有效的措施来执行上述政策。而且，虽然承租人以个人为主，租赁企业目前还不能查询中国人民银行的个人信用记录。

coal bed methane and coal mining methane (CBM, CMM) resources in coal fields at a depth of less than 2,000 meters. AmCham China commends the Chinese government for its 2007 policy to subsidize CBM and CMM drainage and utilization at a rate of RMB 0.3/m<sup>3</sup> (US \$0.05/m<sup>3</sup>). Power generation is an ideal means of utilizing CBM and CMM. However, considering the high cost of CBM and CMM drainage and production, we urge the Chinese government to consider further reform of subsidies to improve mine safety and reduce environmental impacts.

### *Financial Leasing of Equipment*

Financial leasing services have been endorsed as an effective tool to address funding, which then drives economic growth by enhancing customer access to more productive equipment for business expansion. The penetration rate of financial leasing for equipment purchasing in developed countries ranges from 15 to 30 percent, while China's rate remains below five percent. Further reform and consistency of leasing regulations across government departments could help to increase the rate of penetration.

Credit records are vital to screening potential leasing customers. AmCham China applauds the "Notice Regarding the Adjustment of the Process for Accessing the Corporate Credit Reporting System" issued by the People's Bank of China (PBOC) in 2015, which enables financial leasing companies to access the central bank's Credit Reporting System. However, progress remains slow in cities that have not taken substantive measures to implement this policy. Moreover, leasing companies continue to lack access to PBOC individual credit records, even though the majority of lessees are individuals.

Currently, leasing companies under supervision by the Ministry of Commerce (MOFCOM) cannot claim tax credits for their loss provisions, even though this is common practice for leasing companies in developed countries. Additionally, after the full scope of VAT reform across China became effective on May 1, 2016, MOFCOM-licensed leasing companies became subject to a much higher 17 percent VAT rate compared to the 6 percent VAT rate of companies licensed by the China Banking Regulatory Commission, leading to disparities in the leasing industry. In some cases the VAT rate of 17 percent with no deduction is so high that it is impossible to offer even direct leasing to customers. This is not in line with Chinese government's efforts to promote agricultural mechanization and financial support to the real economy.

AmCham China recommends that the Chinese government ensure financial leasing companies are able to access both Corporate and Individual Credit Reporting Systems and create a fair competitive environment among all types of financial leasing companies by adopting consistent tax policies.

### *"Made in China 2025"*

"Made in China 2025" is a framework designed to reshape Chinese manufacturing by reducing labor-intensive production in favor of high-tech machinery and goods. It is aimed at increasing innovation and manufacturing efficiency in order to achieve basic industrialization by 2025, become an intermediate manufacturing powerhouse with full industrialization by 2035, and then a global leader in manufacturing by 2049. However, details on how foreign-invested enterprises (FIEs), particularly those that are developing and producing goods and products in China for China, will be able to participate are unclear.

The Chinese government has mandated numerous indigenous innovation policies and announced high domestic content goals which appears to be tantamount to import substitution. AmCham China members are concerned that the Made in China 2025 initiative will be used to support domestic companies at the expense of FIEs, as these will be effectively excluded from commercial opportunities given the favoritism toward local firms created by the stated industrial policy. End users should have the freedom to purchase capital equipment and services from any vendor they choose, including local FIE manufacturing operations. Reducing the choices available in the marketplace through a government mandate will limit opportunities for innovation and negatively impact the overall development of the industry.

Subsidies are also one further issue regarding machinery and Made in Manufacturing 2025. A number of incentive programs that include subsidies are unclear, because of different implementation methods in different regions. AmCham urges the Chinese government to treat all industrial entities equally and provide a level playing field in implementing "Made in China 2025." More importantly, AmCham is increasingly concerned that the continued use of subsidies could lead to an area of trade conflict between the US and Chinese governments. We therefore recommend the use of tax credits as an alternative in line with global and American practice, rather than subsidies which are viewed negatively. Some key points and recommendations in this area are as follows:

- Consider replacing the current subsidy system with a tax credit regime based on current global norms.
- Subsidies for "Made in China 2025" are distorting competitive opportunities for both domestic and foreign companies.
- Many domestic firms business plans are based on subsidies, and are generally not viable in the long term; this wastes government resources while placing foreign firms at a financial disadvantage.
- Moving to a tax credit regime will incentivize good companies to invest their own funds and receive credits later.

目前，融资租赁公司归商务部监管，其计提的损失准备金不能享受税收减免优惠，而上述税收优惠在发达国家却是融资租赁公司的通行作法。另外，中国自 2016 年 5 月 1 日开始全面实行增值税改革，这之后，商务部审批的租赁公司需要按 17% 缴纳增值税，相比之下，中国银监会审批的公司只需按 6% 缴纳增值税，在租赁行业造成差别待遇。在某些情况下，17% 的增值税税率没有任何减免，高到以至于根本无法向客户提供直接租赁。这不符合中国政府推动农业机械化和金融支持实体经济的做法。

商会建议中国政府保障融资租赁企业能够接入人民银行企业和个人征信系统，实施统一的税收政策，为各类融资租赁企业创造公平竞争的环境。

## 中国制造 2025

《中国制造 2025》是旨在通过减少劳动密集型生产来改造中国的制造业，转而青睐高科技机械和产品的框架。中国的目标是：提高创新能力和制造业效率；到 2025 年基本实现工业化；到 2035 年制造业整体达到世界制造强国阵营中等水平；到 2049 年综合实力进入世界制造强国前列。然而，有关外商投资企业，特别是在华为中国客户开发和生产货物和产品的外资企业，如何参与实现上述目标的具体细节尚不清楚。

鉴于中国中央政府已经颁布了众多自主创新政策，公开表明计划提高自主保障比例，似乎有意实现进口替代。商会的会员企业担心，“中国制造 2025”会被用来牺牲外资企业来扶持内资企业。在很多按照国家产业政策应当优先考虑本土企业的行业，外资企业相当于被排除在商业机会之外。然而，最终用户应当有权从自行选择的供货商购买资本设备和服务，包括外商投资的本地生产企业。通过政令压缩市场选择范围将减少创新机会，对行业总体发展产生不利影响。

补贴也是《中国制造 2025》和机械的另一个问题。由于不同地区的执行不同，许多包括补贴在内的激励方案都尚不明确。商会促请中国政府平等对待所有产业实体，并在《中国制造 2025》实施过程中提供一个公平的竞争环境。更重要的一点是，商会越来越担心，继续使用补贴可能会导致美中两国政府之间的贸易冲突。因此，我们建议将税收抵免作为与全球和美国实践相结合的替代方案，而不是采用不看好的补贴方式。这方面的一些要点和建议如下：

- 考虑基于目前的全球标准，使用税收抵免来取代现行的补贴制度。

- 《中国制造 2025》的补贴扭曲了国内外企业的竞争。
- 许多国内公司的商业计划都是以补贴为基础，从长远来看是不可行的；这既浪费了政府资源，又使外国公司处于财务劣势。
- 转向税收抵免制度，将激励优秀企业投资自己的资金，并在以后获得抵免。
- 税收抵免制度也有利于反腐败，提高税收合规，并可以更好地把控企业。

## 建议

### 对中国政府：

- 使空气污染控制政策和实施更加透明和一致，以确保机械制造业的正常运行。
- 使《第四阶段》与国际标准相接轨，以降低合规成本。
- 允许旧件和再制造成品的自由跨境流通，对通过简化过程回收的毛坯免征增值税。考虑允许再制造成品用作保修更换部件。
- 在执行《中国制造 2025》时，为所有产业实体提供研发资金和其他补贴的平等机会。
- 保障融资租赁企业接入人民银行企业和个人征信系统，为各类租赁企业创造公平竞争的环境。
- 鼓励在工业和商业领域发展中小型和多机组分布式能源热电联产系统，以确保系统运行具有高度的效率。
- 鼓励实现煤矿开采机械化，进一步提高对煤层气 / 煤矿瓦斯抽采使用的补贴水平，提升煤矿的安全、效率和可持续性。
- 考虑基于目前的全球标准，使用税收抵免来取代现行的补贴制度，为外资企业创造公平的环境。

- A tax credit regime is also conducive to anti-corruption measures, enhances tax compliance, and allows greater control of businesses.

## Recommendations

### *For the Chinese Government:*

- **Make air pollution control policies and implementations more transparent and consistent to ensure the normal operations of the machinery manufacturing industry.**
- Harmonize the Tier IV regulation with international standards to lower compliance costs.
- Allow the free flow of core and RFG across borders and make cores recycled with a simplified process exempt from VAT. Consider allowing RFG to be used for warranty replacements.
- Provide equal opportunities to all industrial entities on R&D funding and other subsidies when implementing Made in China 2025.
- Ensure financial leasing companies' access to both the PBOC's Corporate and Individual Credit Reporting Systems and create a fair competitive environment for all types of leasing companies.
- Encourage development of small/medium-sized and multiple-unit DE and CHP systems in industrial and commercial areas with high system efficiency.
- Encourage mechanization of coal mining and further improve subsidies for CBM and CMM drainage and utilization, in order to improve mining safety, efficiency, and sustainability.
- Consider replacing the current subsidy system with a tax credit regime based on current global norms and ensure the level playing field for foreign-invested enterprises.



# Media and Entertainment

## Introduction

China's media and entertainment industry is playing an increasingly important role, providing information, entertainment, and cultural activities to Chinese citizens. As China's international footprint grows, this industry is expected to play an increasingly prominent role in the development of China's culture and soft power projection as well as economy.

The amount of cross-border sales, licensing, investment and other activity in the media and entertainment sector is increasing rapidly. For example, in 2016 China invested US \$4.8 billion (RMB 31.9 billion) in nine entertainment-related projects accounting for just over 10 percent of total Chinese foreign direct investment into the US that year. Double digit compound annual revenue growth rates in this sector in China are projected for the next few years.

China's rich tradition of excellence in entertainment and the arts can best be continued and brought to international attention through initiatives that underscore the commercial value of creative works in an inclusive manner. This should be done while emphasizing the protection of intellectual property rights (IPR).

## Ongoing Regulatory Issues

### *Cross-Sector Issues*

#### Piracy

AmCham China commends China's legislative and enforcement actions to protect IPR and the establishment of intellectual property (IP) courts. However, IP infringement continues to be prevalent in the media and entertainment industry, as evidenced by the large market for pirated products and content, both on- and offline. Despite these violations, there is a growing trend towards legitimate consumption of properly licensed online content, especially regarding online television. This is driven, at least in part, by improvements in IPR protection. As the relevant technologies have advanced, VCDs and even DVDs are becoming less popular, and Chinese are increasingly subscribing to online streaming video platforms.

Periodic campaigns to enforce IPR protection indicate that authorities have the ability to disrupt illegal channels, but organized piracy continues. Despite internet controls, it is still possible to make illegal downloads of music, images, and even entire television programs and films through Chinese search engines.

AmCham China encourages the Chinese government to build on the progress made in the protection of online television content by continuing to strengthen IPR enforcement, increase damage awards, and fight internet piracy by requiring all online platforms to protect IPR and assist in enforcement efforts.

#### Censorship

The Chinese government maintains that censorship and other restrictions on media and entertainment are necessary because of their cultural impact. However, censorship is also often used to restrict market access for foreign television programs, music, and films, which has the undesirable side effect of fostering piracy.

Censorship policies consistently delay the entry of film, television, and music products into the Chinese market, creating a time gap during which pirated products can thrive. For example, legitimate DVD/Blu-Ray film discs require censorship approval by the State Administration of Press, Publication, Radio, Film, and Television (SAPPRFT), which takes at least one month. Meanwhile, pirated DVDs and online content appear within a few days of their initial overseas or local release, eroding legitimate businesses' share of the market. In effect, such censorship only encourages piracy while failing to protect the Chinese market from competition, undermining the sector's profitability and hindering new entertainment and cultural output. This also has a substantial, negative impact on domestic entertainment business owners. For instance, many Chinese production companies allocate large budgets to anti-piracy measures for each of their projects, and these costs tend to be shifted on to Chinese audiences.

Additionally, censorship of the internet through website blockages and technical bottlenecks puts both international and Chinese media and entertainment companies at a disadvantage. Many foreign and large Chinese companies must use virtual private networks to access information necessary

# 媒体和娱乐业

## 引言

**媒**体与娱乐业在中国扮演着越来越重要的角色，为中国公民提供信息、娱乐和文化活动。随着中国国际影响力不断扩大，媒体与娱乐业预计将对中国的文化、软实力的彰显和经济发展产生重要影响。

媒体和娱乐业的跨境销售、许可、投资以及其他活动的数量正在快速增长。例如，在 2016 年，中国在九项娱乐相关项目中共投资 48 亿美元（319 亿人民币），占当年中国对美境外直接投资逾 10%。预计在未来几年，中国该行业的年复合增长率将高达两位数。

中国应以包容的态度、采取积极的举措来提升创意作品的商业价值，并强调知识产权保护的重要性，从而更好地延续中国丰富而优秀的娱乐与艺术传统，吸引国际社会的关注。

## 现存监管问题

### 跨行业问题

#### 盗版

正如“知识产权”一章所述，中国美国商会（商会）对中国保护知识产权的立法和执法行动以及设立知识产权法院的做法表示赞赏。但是，媒体与娱乐行业的知识产权侵权问题仍然非常严重，线上与线下盗版产品与内容所拥有的庞大市场就是明证。尽管存在这些问题，中国合法消费正版网络内容的趋势日益明显，特别是网络电视内容。这种趋势至少在一定程度上得益于知识产权保护的加强。随着相关技术的进步，消费者对于 VCD 甚至是 DVD 的热情度逐步降低，越来越多的中国消费者开始在在线视频平台订阅相关娱乐服务。

定期开展的知识产权保护行动表明当局有能力阻断非

法渠道，但有组织的盗版行为仍在继续。尽管中国政府对互联网进行了管控，用户仍可通过中国搜索引擎非法下载音乐、图片甚至完整的电视节目与电影。

商会鼓励中国政府在保护网络电视内容方面已取得的成果之上继续加强知识产权执法、提高损害赔偿金、要求所有在线平台保护知识产权、协助执法行动，以对抗互联网盗版行为。

#### 审查制度

中国政府坚持认为，考虑到媒体和娱乐行业的文化影响力，有必要对其设立审查制度和进行其他限制。然而，审查制度也经常用于限制外国电视节目、音乐和电影进入中国市场，从而助长盗版活动。这是中美双方都不愿意看到的。

审查政策通常会推迟电影、电视和音乐作品进入中国市场，为盗版产品提供了“真空期”，造成盗版产品肆虐。例如，合法的 DVD 和蓝光电影光碟需要通过国家新闻出版广电总局（现已整合重组）的审批，审批过程至少需要一个月。与此同时，盗版 DVD 和在线内容在正版产品在国内或国外面市后的几天之内就会出现市场上，侵蚀合法企业的市场份额。实际上，这种审查制度只会助长盗版气焰，并不能在竞争中保护中国市场，且降低娱乐业的利润率，阻碍新的娱乐与文化作品的输出。同时，这也对中国国内娱乐业经营者带来严重的负面影响。例如，许多中国娱乐业制作公司会为他们每个项目打击盗版分配巨额预算，而该类成本通常会转嫁至消费者的身上。

此外，通过关停网站和技术瓶颈对互联网进行审查的行为，使国内外的媒体与娱乐公司受到不利影响。许多外国公司和中国大公司必须通过虚拟私人网络才能访问开展业务所需信息。这不仅使成本提高，也影响到外国公司的投资决定。另一方面，小型中国运营商和终端客户因无法及时获取重要信息与内容而陷于不利的竞争地位。商会



to conduct business. This raises costs and affects investment decisions made by foreign companies. Meanwhile, small Chinese operators and end-users suffer a competitive disadvantage because they cannot access vital information and content in a timely fashion. According to AmCham China's 2018 *Business Climate Survey Report*, 82 percent of respondents report that internet censorship negatively impacts their company's competitiveness and operations in China.

### Lack of Regulatory Clarity and Enforcement

Several Chinese government agencies play a role in regulating media, entertainment, and culture. Accordingly, a wide variety of laws, regulations, and even internal government meeting minutes impose regulatory and market access restrictions on the industry. A lack of clarity about these various roles, the regulations themselves, and inconsistent enforcement of these rules retards the development of the media and entertainment industry in China. Moreover, as the Ministry of Culture (MOC), SAPPRFT, and other regulators issue conflicting proclamations in a battle for supervision, the lucrative trade in online piracy continues.

Vague and inconsistent regulations complicate the planning and implementation of business initiatives. In addition, outdated regulations fail to take into account the rapid development of internet and wireless technology, leaving vast areas of online content and service offerings to operate in an atmosphere of ambiguity. Unclear regulations and inconsistent investment approvals also cause China to lag far behind international standards, particularly in the retail distribution of books and periodicals.

AmCham China recommends that the relevant regulatory agencies, including the Ministry of Industry and Information Technology (MIIT), SAPPRFT, MOC, and State Council Information Office (SCIO), establish clearer lines of authority, as well as transparent regulatory drafting processes to allow for public comment at an early stage, with at least 30 days' notice. In addition, we recommend expediting approval processes for foreign participation and investment in the Chinese media and entertainment market.

### *Sector-Specific Issues*

#### Film

China enacted its long-awaited Film Promotion Law on November 7, 2016. The law is intended to simplify the regulation of screenplays, film productions and exhibitions, and foreign-related film festivals. There are no fundamental changes to the existing regulatory framework with regard to foreign companies and individuals. Foreigners continue to be prohibited from engaging independently in film production and distribution in China. No mention is made of lifting the quota on importing foreign films on a revenue-sharing basis. Nevertheless, many of the changes should streamline the official co-production process for foreign producers. There is now

also official recognition of the need for improvements in film financing and the need for tax incentives for local producers.

Non-market barriers continue to hinder the film industry. The number of films that can be imported on a revenue-sharing basis is limited to 34 per year, of which 14 must be produced on an enhanced format (e.g., 3D, IMAX). An additional 34 foreign films per year are permitted on a low, flat-fee, or "buy-out" basis. China's current film quota agreement was signed with the World Trade Organization (WTO) in 2012 with a five-year term expiring in February 2017. An extension of that deal, or any change to its terms, has not yet been announced. AmCham China believes that agreements of this kind present an opportunity for the US and China to take further steps to allow market forces to play a bigger role through further loosening or elimination of the film quota system.

China also maintains an import and distribution duopoly, managed by SAPPRFT and the China Film Group, which dictates which films may be imported and the date of their release. Official co-productions are regarded as Chinese domestic productions and are therefore exempt from the quotas. However, they must still undergo a rigorous approval and censorship process. China has entered into a number of such government-to-government co-production treaties, which is a positive step. Although a co-produced film need not originate from a country with which China has made a co-production treaty, such treaties provide a clearer framework to apply for a co-production license. Nevertheless, the process to obtain a co-production license remains extremely complicated and unclear.

During President Xi's US state visit in September 2015, a long-form version of a 2012 bilateral agreement between the US and China that allowed the import of the aforementioned enhanced-format films was negotiated, before being brought into effect in 2016. The revised agreement clarifies that a studio's 25 percent share of box office revenue is to be calculated on an after-tax basis, and that studios may audit the financial records of their Chinese distributors. The Independent Film and Television Alliance nevertheless contends that China has not complied with the original 2012 agreement, as private companies that were in a position to compete with the China Film Group and Huaxia were not issued film distribution licenses.

In 2012, China became the second largest box office in the world. According to Chinese government figures, China's 2015 box office revenue was RMB 44.0 billion (US \$6.78 billion). Growth slowed in 2016, with takings of only RMB 45.8 billion (US \$6.58 billion). China remains on track to become the world's largest box office in the next few years. According to SAPPRFT, by late 2017 there were 49,000 cinema screens in mainland China. Given such growth, an effective distribution system and anti-piracy control measures will be crucial to the commercial viability of new venues. Additionally, there is speculation that the market is growing saturated amid online competition.

2018 年度《商务环境调查报告》指出，82% 的受访者认为互联网审查制度对其在华业务和竞争力造成了不利影响。

### 缺乏监管透明度与执法力度

中国有多个政府部门拥有监管媒体、娱乐与文化业的权力。相应的，多项法律法规，甚至政府内部会议记录均对该行业实施监管与市场准入限制。监管权责与法规不明确以及执法不一致都妨碍了中国媒体与娱乐业的发展。此外，在国家文化部、国家新闻出版广电总局（现已整合重组）和其他监管机构发布互相矛盾的公告以争夺监管权的同时，利润丰厚的网络盗版贸易仍在继续。

模糊而不一致的规章使商业规划与实施变得复杂。同时，过时的法规没有考虑到互联网与无线技术的迅猛发展，使很多领域的网络内容和服务产品运营充满不确定性。监管不明确与投资审批不一致也使中国远远落后于国际标准，特别是在书籍与期刊的零售发行方面。

因此，商会建议相关监管部门，包括工业和信息化部、中央宣传部、国家广播电视总局、文化部、国务院新闻办公室明确权责和公开监管法规起草流程，允许政策制订初期接受公众意见，并且保证中国高层多次承诺的 30 天以上公示期。此外，商会还建议加快外资企业参与及投资中国媒体与娱乐市场的审批流程。

### 行业特定问题

#### 电影

中国在 2016 年 11 月 7 日正式颁布实施了期待已久的《电影促进法》。本法旨在简化对于剧本、电影制作和展映以及外国相关电影节的监管。本次立法主要影响外国公司和个人，现有监管框架没有根本变化。外国人士仍无法独立在中国进行电影制作，且不得参与中国境内的电影发行。此外，该法未提及要提高外国电影的收入分配配额。尽管如此，该法中很多改变会使外国制作人官方联合制片的流程更趋合理。同时，官方也认识到提升电影融资和为本地制片商提供税收奖励的需求。

有非市场因素继续阻碍电影产业的发展。例如，每年可进行票房分账的进口电影数量仅限 34 部，其中 14 部必须为“高新格式”电影（比如 3D 电影和巨幕电影）。另有 34 部国外电影可以较低的固定价格或“买断”（buyout）价格引进。中国当前适用的电影份额协议是由中国与世界贸易组织（WTO）于 2012 年签订的，协议期限为五年，

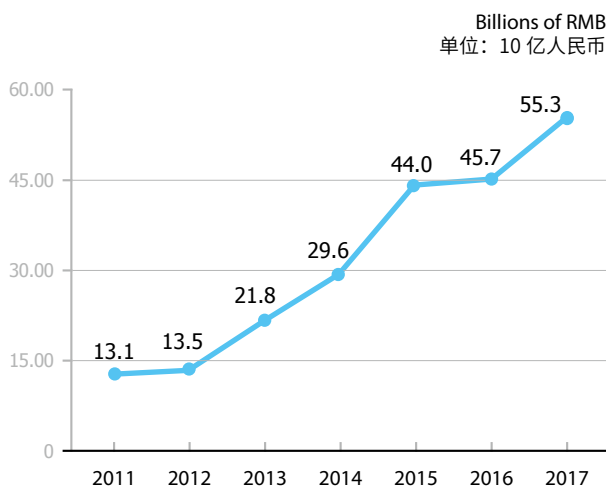
并已于 2017 年 2 月正式到期。该协议的延期或其条款的任何变动尚未公布。商会认为，此类协议将为中美两国带来一个机会，通过进一步修改或废止电影份额体系，能进一步让市场力量发挥更大的作用。

在中国，电影的进口与发行市场处于两强垄断状态，国家新闻出版广电总局（现已整合重组）和中国电影集团可决定进口哪些电影以及何时放映。官方联合制作电影作品被视作中国国内电影作品，因而不受份额限制，但仍需经历严苛的批准和审查流程。中国已加入多项政府间联合制作条约是一项积极的举措。尽管联合制作电影并不要求其起源国属于与中国签订联合制作公约的国家，但是，上述公约规定了更为清晰的联合制作许可申请流程。尽管如此，获得联合制作许可的流程仍然十分复杂，且具有很高的不确定性。

在 2015 年 9 月习近平主席访美期间，中美代表团就将于 2016 年生效的 2012 年双边协议的详尽版本加以商议，这一协议允许进口上述“高新格式”电影。修订后的协议指出，首先，美方票房收入的分账比例是 25%，应按照税后基准计算，美方制片厂可以审计中方电影发行商的财务记录。但独立电影电视联盟表示，中方未遵守原有的 2012 年《中美电影协议》，因为美方一些有能力与中国电影集团以及华影竞争的公司未能取得电影发行经营许可证。

### Box Office Revenue in China 2011-2017

#### 2011—2017 年中国票房收入情况



Source: SAPPRFT

来源：国家新闻出版广电总局

Increased distribution of foreign films, without market manipulation or arbitrary blackout periods, combined with a robust campaign to curb piracy, would benefit the domestic industry by building market demand for quality entertainment products. It would also increase the prominence of Chinese audiences in the overall international market, encouraging foreign filmmakers to cater to the market.

### Television

Non-market mechanisms discriminate against foreign television content in China. The government effectively prohibits Chinese cable operators from carrying foreign channels, limiting such channels to hotels and residential compounds where a high percentage of foreigners live. Meanwhile, imported content is effectively barred from Chinese stations during prime-time slots, with additional restrictions and quotas making it difficult to watch international content. However, foreign channels are required to assist China Central Television channels with access to their home markets outside China.

In October 2014, SAPPRFT announced restrictions on foreign content on Chinese streaming sites. Foreign content must be registered and is restricted to 30 percent of the amount of local productions acquired by each streaming site has. Since early 2015, US content has been unofficially limited to approximately 40 percent of the 30 percent quota for all foreign content. In practice this has limited streamed US content to approximately 12 percent of all streamed content. Further hindrance is caused by the requirement for entire series to be submitted for approval before a single episode can be made available.

In June 2016, SAPPRFT severely curtailed the previously robust business of licensing international television formats to Chinese broadcasters and online video sites. The new regulations restrict satellite channels to airing a maximum of two international or foreign-adapted programs during prime time (7:30–10:30 PM) each year, and also states each program may only be aired for one season during a given year. The new regulations also require that all broadcasters obtain prior approval for remakes of foreign shows, and state that Chinese production companies must own 100 percent of the IP for any programs developed in cooperation with international producers.

In November 2015, SAPPRFT banned certain set-top boxes and streaming applications that can be downloaded and installed on smart TV boxes and allow access to foreign content at lower prices than those charged by cable providers. Under the restriction, smart box manufacturers must now apply to authorized state-owned enterprises before allowing such distribution of content (including audiobooks, audio, radio, TV, and sports).

Additionally, restrictions regarding distribution of foreign television content via satellite television channels as

discussed in previous White Paper editions remain a concern. In June 2016, SAPPRFT imposed a broad definition of foreign television content and tightened existing restrictions on satellite broadcasts of this content. According to the new regulations, programs that are jointly researched and developed with overseas institutions and programs, and which are mainly produced by foreigners, are now regarded as foreign if the Chinese parties have not obtained full intellectual property rights.

Since regulation and censorship do not in practice prevent Chinese people from obtaining international television content, the effect of non-market mechanisms is to foster piracy, as in the case of the film industry. Furthermore, the US allows for direct Chinese investment into its film and television sector and has seen a number of high-profile Chinese investments and acquisitions of key US production companies this year. In contrast, China prohibits even minority stake purchases by foreign individuals or entities in its production company sector.

AmCham China urges the Chinese government to substantially reduce or eliminate quotas and restrictions on foreign television content and publish detailed regulations on domestic television partnerships and collaborations with foreign content producers. This would ensure a competitive industry driven by transparency and mutual cooperation and increase the quality of aired programming for the benefit of Chinese audiences. We also recommend that China rescind its restrictions on foreign investment in private production companies, as well as the onerous restrictions recently placed on the sale of international television formats in China.

### Live Entertainment

Market access for live entertainment continues to be restricted by a lack of transparency, excessive regulation and bureaucracy, and other restrictive practices that stifle industry growth. For example, live events require an advance license or piwen (批文). This process requires submission of very detailed information, such as event crew and support staff rosters, which is typically not available until a show is in the last stages of preparation. In addition, license applications are rejected without a stated reason. Providing an official explanation for rejected piwen applications, as required in many other government regulations, would be very helpful to managers, artists, and agents in future planning and compliance.

Moreover, until a piwen is issued, ticket sales cannot be advertised or marketed. As a result, the customary international practice of selling shows as a package is rendered virtually impossible, and the opportunities to acquire corporate sponsorships that require budgeting in advance are diminished.

After the piwen is issued, visa-granting officials must receive a notification letter that is in line with the names of the event crew and performer submitted for the piwen request.

2012年，中国成为全球第二大电影票房国。根据中国政府数据，中国在2015年的电影票房是440亿人民币（67.8亿美元）。2016年，票房收入增速有所减缓，仅实现458亿人民币（65.8亿美元）的票房收入。中国在将来几年仍有可能成为全球最大的电影市场。根据国家新闻出版广电总局（现已整合重组）数据，2017年末，中国大陆电影银幕总数达49000块。鉴于如此可观的增长，高效的发行制度和反盗版措施将对新建影院商业可行性至关重要。此外，有声音猜测网络市场在竞争中已趋向饱和。

杜绝市场操控或任意禁发期后，外国电影发行量将会增加，加之遏制盗版的有效行动，将激发优质娱乐产品的市场需求，使国内媒体与娱乐业受益，同时还将提高中国观众在整个国际市场上的影响力，促使外国电影制作者迎合中国市场的需求。

## 电视

非市场化机制对外国电视内容进入中国形成歧视。中国政府强力禁止中国有线电视运营商引入外国频道，只限在外国人居住比例较大的酒店和住宅区播放此类频道。此外，中国的电视台不得在黄金时段播放境外剧，加上其他限制和配额要求，使在中国的观众很难收看到国际节目。但外国频道则被要求协助中国中央电视台海外频道进入其本土市场。

2014年10月，国家新闻出版广电总局宣布限制境外剧在中国的的视频网站播放。境外剧必须登记，并且数量不得超过各网站已获得本地作品数量的30%。从2015年初开始，美剧数量受到非官方的限制，其数量只能占到全部境外剧总数（即占以上30%配额）的40%左右。这一规定实际上相当于限制美剧数目不超过本地作品数目的12%左右。此外，由于所有季度的美剧全部送审批准之前中国网站不能播出任何一集，这样的要求给美剧进入中国造成进一步阻碍。

2016年6月，国家新闻出版广电总局对许可国际电视在中国广播公司和在线视频网站进行许可播放的业务进行了严厉限制。根据新法规规定，卫星频道每年黄金时间（晚7:30—10:30）最多只可播放两部国际或外国改编的电视节目，同时，每一节目在一年中只能播放一季。新法规还规定，所有广播公司在播放外国节目的翻拍作品时，须先行获得批准，同时对于与国际制片方合作开发的任何节目，其知识产权须100%归中国制片企业所有。

2015年11月，广电总局发布禁令限制在智能电视上

安装某些牌子的机顶盒和某些视频应用软件，这些机顶盒和视频软件可以低于有线电视运营商的价格播放境外剧。按禁令规定，机顶盒生产商须向官方授权的国有企业申请审核，机顶盒上播放的内容（包括有声书、音频、视频、电视节目以及体育节目）审核通过之后，方可发布。除此之外，关于此前的《白皮书》中讨论的对于通过卫星电视频道播放境外电视剧的限制，其现状仍令人担忧。2016年6月，国家新闻出版广电总局对外国电视内容进行了广泛的定义，并加强了对该内容进行卫星广播的限制。根据新规定，与海外机构和项目共同研发的，且主要由外国人制作的项目，如果中方没有获得完全的知识产权，则被视为属于外国机构。

与电影市场类似，监管与审查制度实际上不能阻止中国观众获得国际电视内容，因此非市场化机制只会助长盗版行为。另外，尽管美国允许中国对其电影电视行业进行直接投资，商会确实也看到2016年中方有多笔巨额投资，且收购了多家重要美国制片企业，但中国仍然禁止外国个人或实体收购中国境内的制片企业（即便是少数股权，亦不允许）。

因此，商会促请中国政府大幅减少或取消对外国电视节目的配额限制，同时公布详细监管法规来规范国内电视与外国内容制作商的合作与协作。这样有助于通过监管透明度和相互合作促进行业竞争，使中国观众收看到更优质的电视节目。商会也建议中国废除对于外资对中国私人制片企业的投资限制规定，以及最近出台的关于限制在中国销售国际电视节目模式的诸多规定。

## 现场娱乐

由于缺乏透明度、过度监管、官僚主义以及其他抑制行业增长的管制措施，现场娱乐市场的准入仍然受限。例如，举办现场活动需要提前获得许可或批文。该过程需要主办方提交详细的信息，比如活动工作人员和协助人员名册，而此类信息往往在活动准备的最后阶段才会到位。另外，监管机构拒绝发放许可时并不提供拒绝理由。如能提供拒绝发放批文的官方解释（其他政府法规已存在类似规定），将有助于经理人、艺术家和中介机构更好地规划未来活动，并实现合规要求。

此外，在下发批文之前，活动主办方不得开展售票广告和宣传活动。因此，作为国际惯例的一整套销售展示活动几乎不可能在华开展，而主办方获得企业赞助（需要提前预算）的机会也被削弱。

However, most international tour promoters do not know which of their contracted personnel will be coming to China more than one month prior to a show's opening, let alone six to nine months in advance when the piwen is requested. As a result, tour promoters are forced to seek exceptions and manage crises in order to obtain the necessary visas.

Touring personnel are also required to obtain a "commercial performance" work visa. This must then be converted into a year-long residence permit, despite the fact that most tours remain in China for less than three months. This kind of visa requires a local performance permit from the municipal culture bureau, and a letter of invitation for a commercial performance from the municipal foreign affairs office. Foreign-invested companies are currently not allowed to directly apply for commercial performance permits from cultural bureaus in China, but rather must work with local companies to obtain these.

Lack of transparency in the Public Security Bureau's policies on the provision of security at live events also constitutes a barrier for international tours. For any given event, the possible scope of the PSB's role is unclear, as are the fees to be charged which are unpublished. Meanwhile, the number of seats set aside for security purposes usually exceeds the number of security personnel attending the event, while the number of seats required also varies without explanation. Such practices reduce the sales capacity of an event. Moreover, the tickets that are set aside often find their way to hawkers who sell them at a discount, driving consumers away from legitimate sales channels and undermining the commercial viability of the event.

This lack of transparency and clear guidelines for obtaining the piwen, compounded by a wide of other issues from security to visas, deter world-class performers from coming to China. AmCham China urges the Chinese government to streamline and clarify relevant procedures and regulations, not only for the benefit of live entertainment venues, producers, and artists, but also in the interest of China's culture industry.

### *Music*

Important sources of income available to the music industry in the West, such as royalties from the sale, public performance, and broadcast of music, remain mostly unavailable in China. Weak copyright protection and enforcement in China has created an environment in which consumers are less willing to pay for music downloads. Additionally, the limited availability of legitimate download sources and the unwillingness of Chinese broadcasters to pay music royalties have also hampered potential sources of income. When music downloads generate income at all, that income is often merely related to the advertising on the platform from which the download occurs.

Continuing restrictions on international record companies that wish to produce and sell music in China also foster

piracy and hinder the development of China's own music industry. The presence of US companies in China would result in additional jobs and expertise, leading to market growth and development of locally produced music, as has occurred in other countries. In addition, US presence would allow domestic musical artists to acquire international contacts, which would in turn lead to more opportunities for China to expand its cultural footprint abroad.

AmCham China urges the Chinese government to permit foreign sound recording companies to invest and operate in all facets of China's music business in the same manner as local companies. This includes the right and capacity to sign artists and to record, produce, market, and distribute recorded music in physical form, as well as over online and mobile platforms.

## Recommendations

### *For the Chinese Government:*

- **Reduce non-tariff and market access barriers to entry for all types of foreign media and entertainment. Delay in doing so risks a rise in support for the imposition of reciprocal restrictions on Chinese media and entertainment in the United States.**
- Increase and then remove all quotas for foreign films.
- Abolish the new restrictions on the streaming of foreign television content, eliminate the television quota system, ease restrictions on prime-time broadcasts and foreign channels' market access, and publish detailed regulations for foreign content producers regarding television partnerships and collaborations.
- Fight IP violations in all media and entertainment sectors and increase judicial damage awards in order to enhance their deterrent capabilities.
- Permit foreign investors and production companies to invest and operate in all facets of the program production business in the same manner as Chinese companies.
- Establish clearer lines of authority among MIIT, SAPPRFT, MOC, SCIO, and other media and entertainment regulatory agencies, and institute a transparent regulatory drafting process that allows for public comment.
- Reconcile piwen and visa application procedures for live entertainment personnel to support China's goals of cultural exchange and development, for example, by allowing personnel from abroad to enter China on business visas instead of work visas.

下发批文后，活动主办方需向发放签证的官员发送通知书，列出与批文申请书上相同的工作人员和演员姓名。然而，多数主办方在表演开始一个月之前尚不能获知准确的访华人员名单，更不用说距活动尚有六至九个月就需要批文。因此，为了获得签证，主办方被迫采用例外措施和危机管理措施。

除此之外，外国演员还需取得“商业表演工作签证”，访华人员必须将工作签证转换为一年居住许可证。而实际上多数访华人员在华逗留时间不足三个月。申请工作签证需要准备由市政文化当局发放的本地表演许可和由市级外事办公室发放的商业表演邀请信。外资公司目前无法直接向中国文化当局申请商业表演许可，而必须与本地公司合作以获取许可。

公安局政策中关于现场活动的安全条款缺乏透明度也为国际活动举办构成障碍。公安局对任何活动的职责范围及收费情况并不公开。此外，为安保人员提供的专座往往超过出席活动的安保人员实际数量，安保人员需要的座位数量不加任何解释就会出现变动。此类现象影响到活动的销售能力，预留专票往往由黄牛党打折卖出，促使消费者偏离合法销售渠道，损害了活动的商业利益。

总之，缺乏透明度和明确指导原则的批文流程，加之安保和签证等问题，都阻碍了世界一流的表演艺术家来华表演。商会促请中国政府简化并明确相关流程与法规，此举不仅对现场娱乐场馆、主办方和表演艺术家有利，也将使中国文化产业受益。

## 音乐

西方音乐界的常见主要收入来源包括销售版权、公开表演与音乐广播，而在中国，此类渠道大多无法为音乐界带来收入。由于中国版权保护不够、执法不力，导致中国消费者不太愿付费下载音乐。除此之外，合法下载资源有限以及中国广播商不愿支付音乐版权这两点原因也导致潜在收入来源减少。即使音乐下载能够带来收入，这种收入也通常来源于音乐下载平台的广告收入。

对希望在中国制作和销售音乐作品的国际唱片公司的持续限制不仅助长盗版之风，更阻碍着中国本土音乐产业的发展。美国公司在华经营不仅能为中国带来工作岗位和专业知识，还能扩大市场，并促进本土音乐发展，这在其他国家早已有先例可循。此外，美国公司使本土音乐家能接触到国外音乐家，这将为中国文化走向海外创造更多机会。

商会促请中国政府允许外国音乐制作公司以与中国公司相同的方式投资并运营中国音乐业务，包括签约艺人，录制、制作和推广音乐作品以及通过实体形式或借助互联网与移动平台发行音乐作品。

## 建议

### 对中国政府：

- 减少针对各类外国媒体和娱乐项目进入中国市场的非关税壁垒，和对外国媒体提供商的市场准入壁垒。推迟降低非关税和贸易壁垒，有可能会增加美国对中国媒体和娱乐的互惠限制。
- 增加外国电影的整体配额，并逐步取消配额限制。
- 取消限制外国电视节目在中国播出的新规定、取消电视配额体系、放松黄金时间播放限制和外国频道进入中国市场的限制，同时公布详细监管法规来规范国内电视与外国内容制作商的合作与协作。
- 在所有媒体与娱乐领域打击知识产权违法行为，提高法定损害赔偿限额，从而提法规的震慑力。
- 允许外国投资者和制片公司按照中国企业所享有的业务运行方式，就节目制作全面业务开展投资和运营工作。
- 明确工业和信息化部、国家新闻出版广电总局、文化部、国务院新闻办公室和其他媒体与娱乐监管机构的职责权限，建立透明的规则起草流程，允许征求公众意见。
- 协调现场娱乐活动参加人员的批文与签证申请流程，为中国实现文化交流与发展目标提供支持，例如允许国外人士持商务签证而非工作签证入境。
- 允许外国唱片业签约艺人，以及录制、制作、推广音乐作品并通过实体形式、互联网及移动平台发行音乐作品。

### 对美国政府：

- 与中国及其他 WTO 合作伙伴进行合作，就电影配额协议进行重新协商，以便市场力量能够

- Allow the foreign sound recording industry to sign artists and record, produce, market, and distribute recorded music in physical form as well as over Internet and mobile platforms.

*For the US Government:*

- **Work with China and other WTO partners in the renegotiation of the film quota agreement with the goal of allowing market forces to play a greater role and eliminating quotas for foreign films.**
- Work with China to review the investment restrictions on US companies in the media and entertainment sector, with a goal of providing greater market access for US companies similar to that enjoyed by Chinese companies regarding investments in the US market.

**发挥更大的作用，并取消外国电影配额制度。**

- 与中国合作，针对美国公司在媒体和娱乐行业所面临的限制进行审查，以增加美国公司的市场准入机会，确保美国公司在中国能够享受到中国公司在美国所享受类似的市场准入条件。



# Oil and Gas, Energy, and Power

## Introduction

China's energy sector continued to receive much attention in 2017, particularly late in the year. The country steadily advanced its reform of the oil and gas sector through policies consistent with its 13th Five-year Plan aimed at promoting market-based gas prices, increasing gas usage to combat air pollution, and formulating guidelines for the midstream and downstream segments. The 19th Communist Party Congress, held in October 2017, laid out a large-scale framework for transitioning the nature of China's economic growth from "high-speed" to "high-quality," and for increasing efforts in poverty alleviation, pollution control, and the overall improvement of Chinese citizens' quality of life. These initiatives have already had an effect, with rising demand for cleaner energy and less air pollution this winter. Challenges and uncertainties remain, however, as China faces rising energy demand, high dependence on foreign oil and gas, and infrastructure development needs.

AmCham China strongly encourages the Chinese government to continue its emphasis on oil and gas reform. Such reform creates a fair, efficient, and attractive business environment which incentivizes multinational companies to contribute the resources, capital, advanced technology, and business expertise needed to meet China's energy needs and accomplish China's goals of high-quality growth. Energy cooperation was integral to the US-China relationship in 2017. AmCham China encourages and supports continued dialogue between the governments to strengthen trade in business communities. In particular, AmCham China supports US companies' efforts to secure more liquified natural gas (LNG) supplies for China to meet its growing demand for clean burning fuel.

## Natural Gas

### *Promoting Natural Gas Usage*

At the beginning of 2017, China announced its aim of increasing the use of clean energy sources (non-fossil fuels) in the primary energy consumption mix to 20 percent (from 12 percent in 2015), and the share of gas to 15 percent (from 5.9 percent in 2015) by 2030. China also stated a further aim of expanding its natural gas power generation capacity from

70 million kW to 110 million kW by 2020, a rise of more than 50 percent. Notably, China also indicated that the expansion of coal power would be limited to a 20 percent rise in the same time frame, which was later halved on December 9, 2017 to 10 percent.

Gas industry reforms of 2016 and 2017 involved efforts to provide end users with competitive prices by decreasing pipeline transport costs, reducing taxes and lowering profit margins. However, no other new actions were taken, such as measures to promote new market entrants or eliminate infrastructure bottlenecks. Furthermore, these reforms did not address China's need to create market opportunities for attracting foreign firms bringing new technologies and expertise.

### *Natural Gas Pricing*

During 2017 various government initiatives were taken to strengthen the price competitiveness of natural gas relative to other forms of energy, and to create market prices that are compatible for the large-scale use of natural gas, including the reduction of VAT on natural gas from 13 percent to 11 percent. AmCham welcomed the government's decision to reduce VAT and supports further reduction in VAT generally, as well as the policy to refund VAT in full for imported LNG that will bring more natural gas into China.

In June 2017, the National Development and Reform Commission (NDRC) ordered that China's gas companies' return on assets (ROA) be restricted to less than 7 percent. While this provides price transparency, the 7 percent figure varies across regions and lowers the profitability of the industry as a whole. Furthermore, in the municipal gas industry control of wholesale and retail prices continues. Retail prices are determined by local governments with public hearings required for household retail gas prices. These actions can be expected to discourage the entry of private companies in the market, curtailing investment in gas distributors by foreign companies.

### *Shanghai Petroleum and Natural Gas Exchange*

AmCham China supports the NDRC's call to achieve market-oriented pricing by 2020 and believes that the Shanghai Petroleum and Natural Gas Exchange (SHPGX) is key to achieving this goal. SHPGX's efforts to develop into

# 油气、能源和电力

## 引言

**在** 中国，能源行业继续成为焦点，在 2017 年底尤为受到关注。通过发布符合“十三五”规划的政策，中国稳步推进油气行业的改革：推动天然气价格的市场化，提高天然气使用率以减轻空气污染，为中游和下游行业制定指导方针。在 2017 年 10 月举行的中国共产党第十九次全国代表大会提出了一项宏大的计划，致力于引领中国迈向以“高质量”而非“高速度”的经济增长为特征的“新时代”，并且在近期会优先进行精准扶贫、控制污染以及全面提升全国公民的生活品质。这些广泛推进的举措已颇有成效，在 2017 年冬季对清洁能源的需求不断增加，空气污染水平较高的天数也日益减少。然而，由于中国要同时应对不断上涨的能源需求、对国外油气的高度依赖以及基础设施发展需求的问题，挑战和不确定因素依然存在。

中国美国商会（商会）大力鼓励中国政府继续重视油气改革。这一改革创造了一个公平、高效和具有吸引力的商业环境，以此激励跨国企业贡献资源、资本、先进的技术及业务专业知识，从而满足中国的能源需求并实现中国经济高质量增长的目标。能源合作是 2017 年美中关系不可或缺的一部分。商会鼓励并支持继续开展两国政府间对话，以加强经贸往来。商会尤其支持美国公司努力向中国提供更充足的液化天然气供应，从而满足中国对这种清洁燃料日益增长的需求。

## 天然气

### 推广天然气的使用

在 2017 年初中国方面宣布，计划截至 2030 年在国内主要能源消费结构中把清洁能源（非化石燃料）的使用比率大幅增加至 20%（从 2015 年的 12%），天然气的份额则增加至 15%（从 2015 年的 5.9%）。中国还透露，计划

将在 2020 年把天然气发电量从 7 千万千瓦提高至 1.1 亿千瓦，增幅超过 50%。值得注意的是，中国表示在同一时期内会把煤电的增幅限制为 20%，该增幅后来在 2017 年 12 月 9 日被修改为 10%。

通过 2016 年和 2017 年的燃气行业改革，有关部门尝试利用降低管道运输成本、减少税负和降低利润率的措施，为终端用户开出有竞争力的价格；然而却没有采取其他新举措，例如促进新鲜血液进入市场或消除基础设施发展的瓶颈。此外，这些改革并未解决中国在市场上创造机会来吸引拥有新技术和专门知识的外国企业的需求。

### 天然气价格

政府在 2017 年全年采取了各种措施来强化天然气对于其他类型的能源的价格竞争力，并制定出契合天然气的大规模使用的市场价格，其中包括将天然气增值税率从 13% 降低至 11%。商会赞赏政府减少增值税的决定，并且支持进一步从总体上减少增值税以及对进口液化天然气实行增值税全额退税的政策，以便中国获取更多的天然气。

2017 年 6 月，国家发展和改革委员会（国家发改委）下令将中国的燃气公司的总资产回报率（ROA，按净收入/总资产计算）限制为低于 7%。虽然这提高了价格透明度，但是该数据在各地区政府之间存在差异且削弱了整个行业的盈利能力。此外，在市政燃气行业，对批发和零售价格的控制仍在继续。零售价格由当地政府根据家庭零售燃气价格的公开听证会的结果来决定。这些行动预计会打击到私营企业进入市场的积极性，因而减少国外企业对天然气分销商的投资。

### 上海石油天然气交易中心

国家发改委呼吁到 2020 年为止实现以市场为导向的定价，商会对此表示支持并认为上海石油天然气交易中心是实现这一目标的关键。上海石油天然气交易中心努力发展

a viable trading hub should allow for better price discovery in the market, greater transparency in market fundamentals, more efficient allocation of resources, and provide previously unavailable tools for market participants to manage risk inherent in this industry.

SHPGX saw increasing support from China's national oil companies (NOCs) in 2017. For example, CNOOC supplied LNG to SHPGX for online bidding, which was China's first instance of marketing gas by auction. In addition, PetroChina held the first pipeline gas auction on SHPGX, while Sinopec announced a plan to market no less than 0.3BCM of pipeline gas on SHPGX in Winter 2017. Such NOC participation in the SHPGX has directly contributed to growing liquidity on the platform.

Despite such progress, many serious challenges remain that must be overcome for SHPGX to develop into a functioning hub in the areas of liquidity, supply diversity, third party access and structured product offers. To address these issues, AmCham China recommends the following points for consideration:

- Expand the scope of auctions from seller only to a mix of seller and buyer auctions, with a long-term view of transitioning into a 'continuous market', similar to practices in US and European gas markets, so that natural gas and LNG contracts can be exchanged at any point during the day.
- Regarding financial trading, develop futures contracts based on existing physical contracts to improve liquidity and enhance price signals to encourage capital investments. Futures contracts can allow existing buyers and sellers alike to better manage their risks and allow infrastructure owners to increase the utilization of assets. The development of ICE future contracts in Europe has helped improve liquidity across the market as well as introducing new participants.
- Encourage incremental supply and demand to be traded on SHPGX to increase volumes. Domestic demand reached 237.3 BCM in 2017 and is expected to rise above 300 BCM by 2020. If this proposal were to be adopted, it would ensure the exponential growth of the volume of gas traded on the exchange and rising liquidity.
- Focus on structural reform and continue to implement market reforms in both the upstream and downstream sectors, particularly regarding the ability for third parties to access infrastructure. Currently, only participants that can deliver and receive physical gas or LNG can engage in the exchange-sponsored price setting process, which severely limits market access and the number of participants. Structural reform to ease third-party access will be critical to increasing supplier diversity and liquidity.
- Encourage the standardization of trading contracts and confirmation notices traded on SHPGX. By making

contracts more fungible, SHPGX can help create a commoditized market, which will in turn develop liquidity. This has been achieved across UK gas markets through a 'network code' that specifies bandwidths for gas qualities across the grid, allowing gas to be moved anywhere within the UK (and most of Europe) under a standardized contract.

- Increase the focus on data transparency and make weekly and monthly reports about fundamental and trading data needed to underpin legitimate and stable market-based natural gas price formation. Buyers and sellers need regular and reliable reporting of natural gas supply, demand, inventories, and import/export data to inform their pricing and purchasing decisions. The US Energy Information Administration (EIA) is one example of an objective, fundamental data provider watched by US natural gas traders. Natural gas futures pricing is also strengthened by regular reporting of market volume and positioning data, such as that provided by the weekly US CFTC Commitment of Traders report.

### *Pipeline & Infrastructure Development*

China made progress in many aspects of infrastructure developments in 2017. For natural gas pipelines, a set of new inter-provincial tariffs took effect based on the mechanism unveiled in 2016, resulting in a 15 percent decline in tariffs on average. This should in turn unlock more gas demand by reducing costs to end consumers. The pipeline tariffs are assessed based on a 75 percent utilization rate that provides an economic incentive for operators to release unused capacity for third-party access. These are important steps toward securing authentic pipeline open access and AmCham China fully supports the direction of this reform.

China has 13 existing sites for underground natural gas storage facilities, but the effective working capacity can meet only 3 percent of annual gas consumption, which is far below the average in regions where there is significant gas usage. The government's requirement that market participants must own sufficient storage to meet 10 percent of demand goes some way to addressing this problem, but more needs to be done. Gas supply shortages this winter further indicated the need for more infrastructure development. AmCham China urges the government to focus reform on areas of third party access, data availability, and pipeline independence. These reforms will lead to market restructuring and create the positive price signals required for infrastructure investment.

The government should also establish a fair and transparent mechanism for third-party pipeline and storage access and stipulate the negotiation procedures clearly. In Europe, the standardization of TPA rights and creation of an online portal through which capacities must be offered (PRISMA system) has opened market access beyond traditional

为一个可行的交易中心，这应该能够使其在市场中更好地发挥价格发现功能，加大市场基本面的透明度，提高分配资源的效率，并为市场参与者提供前所未有的工具来管理该行业内在的风险。

上海石油天然气交易中心在 2017 年期间已得到了国有石油公司日益加大力度的支持。例如，中国海洋石油集团有限公司（中海油）为上海石油天然气交易中心提供液化天然气以进行线上竞拍，成为中国以拍卖方式销售天然气的首创。此外，中国石油首次在上海石油天然气交易中心举行了管道天然气的拍卖，而中国石化则宣布计划在今年冬季在上海石油天然气交易中心销售不少于 0.3 亿立方米的管道天然气。国有石油公司对此类活动的参与已经直接促成了上海石油天然气交易中心流动性的提升。

虽然迄今为止取得了以上进展，但是为了使上海石油天然气交易中心发展成为一个在流动性、供应多样性、第三方准入和结构性产品发售的领域里运作的中心，还必须克服许多严峻的挑战。为解决这些问题，商会推荐考虑以下几点建议：

- 范围 - 从仅限卖方拍卖扩展到卖方拍卖与买方拍卖混合，长远而言是从拍卖过渡到“连续市场”，类似于美国和欧洲天然气市场的做法，因此可以在一天中的任意时刻进行天然气和液化天然气的相关交易。
- 金融交易 - 在现有的现货合约的基础上开发期货合约，从而提高流动性并加强价格信号以鼓励资本投资。期货合约可以允许现有买家和卖家改善风险管理，并允许基础设施所有者增加对其资产的使用。洲际交易所期货合约在欧洲的发展极大地提升了整个市场的流动性，并引入了新的参与者。
- 成交量 - 鼓励在上海石油天然气交易中心增加待交易的供应量和需求量以提高成交量。国内需求量预计在 2017 年达到 240 亿立方米，到 2020 年将增至 300 亿立方米以上。如果采纳这一方案，将确保交易中心的天然气交易量呈指数增长，流动性亦会有所提升。
- 结构性改革 - 继续支持上游和下游行业的市场改革，特别是针对基础设施的第三方准入。如今，只有能够交付和接收实物天然气或液化天然气的参与者才能参与由交易所资助的价格发现流程，严重限制了进入市场的机会以及参与者的数量。针对第三方准入的结构性改革对于提高供应商的多样性和流动性都将至关重要。

- 合约标准化 - 鼓励在上海石油天然气交易中心实行交易合约和确认交易通知的标准化。通过提高合约的“可替代性”，上海石油天然气交易中心可以协助创建“商品化市场”，该市场反过来又会促进提升流动性。借助针对天然气质量在全网指定带宽的“网络代码”，此类市场已经在英国的天然气市场中得到实现，意味着可以按照标准化的合约在英国（以及欧洲的大部分地区）的任何地方进行天然气输送。
- 数据透明度 - 每周、每月报告有助于形成合法、稳定、市场化的天然气价格所需的基础交易数据。买家和卖家需要有人定期提供天然气供需、库存和进出口数据的可靠报告，以通报他们的定价和采购决策。美国能源信息署就是一个受到美国天然气贸易商密切关注、提供客观基础数据的机构。通过定期报告市场交易量以及对诸如由美国商品期货委员会每周发布的期货及衍生品持仓报告所提供的数据进行定位，天然气的期货定价也因此得到加强。

## 管道和基础设施发展

在 2017 年中国已经在基础设施发展的许多领域中取得进展。对于天然气管道，一套基于 2016 年公布的机制的新跨省管道运输收费制度开始生效，导致费用平均下降 15%，通过此举减少了终端消费者负担的成本，应该会催生更大的用气需求。管道收费的评估是基于 75% 的负荷率，该负荷率为运营商激活未曾使用的第三方准入的能力提供了经济上的动力。这些都是实现真正开放管道市场准入的重要步骤，商会全力支持这一改革方向。

对于地下天然气储存设施，中国现有 13 个储存点，但其有效的工作容量只能达到每年天然气消耗量的 3%，远低于其他重要的用气区域的平均水平。政府要求市场参与者必须拥有足够的达到需求量的 10% 的存储量，这有助于缓解问题但仍然需要采取更多的举措。今年冬季的天然气供应短缺进一步凸显了对深化基础设施发展的需要。商会敦促政府将改革的重点放在第三方准入、数据的可获得性和管道的独立性的方面。这些改革将促成市场重组，并创造出基础设施投资所需的积极价格信号。

第三方准入 - 政府应针对管道和存储的第三方准入建立一项公平透明的机制，并要明确规定磋商程序。在欧洲，第三方准入权利的标准化以及协助提供容量的在线门户（PRISMA 系统）的创建已经促成在传统公用事业和供应商之外开放市场准入。管道数据应该得到定期发布以便

utilities and suppliers. Pipeline data should be published routinely to facilitate third-party users' decision-making. As an example, US pipeline companies release their pipeline utilization rate on a daily and monthly basis. In Europe, a range of directives from the EU and national governments require shippers to disclose real-time flow data, as well as nominations one day ahead, leading to increased transparency on capacity availability. While there has been debate around the need for independent pipeline companies, there are many working examples of public companies owning regulated businesses in other countries such as the US. A national pipeline company is not the only option for China, and AmCham China looks forward to seeing further clarification from the government on this issue.

The Underground Gas Storage (UGS) is underdeveloped, partially because of the huge capital investment required and the lack of clear economic signals to encourage industry investment. The development of the SHPGX hub pricing encompassing seasonal differences and a sanctioned cost-recovery mechanism would surely help. In addition, we recommend that the government make more subsurface data openly available for potential investors in this sector.

### LNG Receiving Terminals and Markets

Attempts to open LNG terminals and accompanying pipelines to third party players by the Chinese government have been undermined by vested interests and there have been very few successful cases so far. Having fair access to infrastructure for third parties represents a step forward toward an open LNG market.

By the end of 2017, China's LNG terminals were predominantly controlled by the NOCs. The combined storage capacities of these state-controlled terminals currently total over 50 million tons, or more than 90 percent of overall capacity in China.

The concept of "rental use of gas infrastructure", which is more common in the Americas, Europe and Australia, is not yet general practice in China. In addition to building more LNG terminals to satisfy demand for growing natural gas imports, our members recommend that China also work on reducing regulatory red tape to promote access to and direct investment in LNG terminals by private and foreign companies.

### Upstream Oil & Gas

In 2017, very few new upstream production sharing contracts (PSC) were signed by foreign oil companies in China, as the dominance by NOCs for securing higher quality upstream acreage continued. Owing to the steady decline in domestic oil production and the increase in demand for energy, China's dependence on imported crude exceeded 65 percent in 2017, a level which is expected to increase further

in the next few years, so heightening national energy security concerns. Domestically, China has large undiscovered resources and basins rich in hydrocarbons. However, most of the remaining resources are technically challenging. For example, some are located in deeper reservoirs or in offshore deep water, while others are subject to high temperature and high pressure. Some also have low permeability or involve heavy oil or high sulfur gas.

Owing to low oil prices, lack of exploration success, and expiration of existing production licenses, more International Oil Companies (IOCs) have chosen to leave or reduce their upstream businesses in China and shift their investments to other parts of the globe. If this trend continues, it will limit the Chinese upstream sector's access to foreign capital and advanced technical expertise, which is counterproductive to China's need for more domestic exploration success and production.

The State Council announced its long awaited Oil and Gas Reform Plan in May 2017 with high-level guidelines, and also issued further notices to promote foreign investment such as Circular No. 39 and the 2017 revision of the Foreign Investment Catalog. However, a detailed implementation plan and timetable has yet to be provided by the relevant authorities. Furthermore, the process for securing environmental permits for upstream oil and gas developments, ranging from major new capital projects to drilling of wells to support daily operations, has become increasingly unpredictable. This has resulted in concern about the negative impacts on existing production targets and project economics, as well as future expansion and investment opportunities. AmCham China recognizes the strong efforts made by the State Council and urges the NDRC, new Ministry of National Resources, and other relevant government authorities to expedite the policy changes and legislative reforms necessary for expanding access to upstream acreage, removing restrictions, increasing permitting efficiency, and providing fiscal and taxation incentives for IOCs. It is also important that NOCs adopt a win-win mindset and offer more attractive upstream opportunities to motivate IOCs to increase capital and technology investment in China.

### *Conventional Oil & Gas Upstream Bid Round*

In the 2017 China offshore licensing round, CNOOC, China's premier offshore NOC, offered 22 exploration blocks in the South China Sea covering an area of 47,270 km<sup>2</sup> to foreign companies. Among these 17 were located in shallow water and near existing fields, which suggests a shift in focus to a low-cost, low-risk, step-out exploration strategy aligned with global exploration trends. However, 10 of the 22 blocks were recycled from previously unsuccessful bidding rounds in 2014 and 2016.

To attract more bidding interest and encourage offshore exploration, CNOOC took a further step in 2017 by relaxing

第三方用户进行决策。例如，美国的管道企业会每天 / 每月公布其管道的负荷率。在欧洲，欧盟和各国政府的一系列指示亦要求销售商披露实时的流量数据以及日前输送量，从而提高了可用容量的透明度。虽然对独立管道公司的需求引发了众多争论，但还是存在许多在其他国家（如美国）有受管制业务的上市公司的范例。国有管道公司并不是中国的唯一选择，商会期望看到政府在这个问题上的进一步阐释。

地下储气库 - 地下储气库的行业发展滞后，部分原因是由于需要巨额的资金投入以及缺乏鼓励行业投资的明确经济信号。发展涵盖了季节性差异和受认可的成本回收制度的上海石油天然气交易中心定价机制，一定会对此有所帮助。此外，商会建议政府向该行业的潜在投资者公开更多的地下数据。

### 液化天然气接收站和市场

尽管中国政府试图向第三方机构开放液化天然气接收站和配套管道，此类尝试还是一直深受既得利益的困扰，迄今为止成功的案例极少。第三方若能获得公平的基础设施市场准入就意味着向开放的液化天然气市场迈出了一步。

截至 2017 年底，中国的液化天然气接收站主要受国有石油公司控制。目前，这些国家控制的接收站的混合存储量已超过 5000 万吨，或占中国整体存量的 90% 以上。

更常见于美国、欧洲和澳大利亚的“天然气基础设施使用租赁”这一概念在中国尚未风行。除了建设更多的液化天然气接收站来满足日益增长的天然气进口需求之外，商会建议中国还应努力减少监管上的繁文缛节，以促进私营企业和外国企业获得液化天然气接收站的准入并对接收站进行直接投资。

### 上游油气行业

在 2017 年，由于国有石油公司在争取掌控更优质的上游矿区方面仍然占据主导地位，国外石油公司在中国签署的新的上游产量分成合同（PSC）数量极少。因为国内石油产量的稳步下降以及能源需求的增加，在 2017 年中国对进口原油的依赖度超过 65%，在未来几年此水平预计将进一步上升，加剧了国内对能源安全的担忧。中国境内拥有大量未被发现的资源和富含碳氢化合物的盆地。然而，其余大部分的资源面临着技术上的挑战，例如，有的资源位于相对较深的水库或深海区域；有的则受到高温高压的

影响；而另外的一些则具有低渗透性或涉及重油或高含硫气体。

由于近期油价低迷、勘探成功率低以及现有生产许可证到期的关系，有更多的国际石油公司选择退出或减少其在华的上游业务，并且将其投资转移至其他国外地区。如果这种趋势持续，将限制中国的上游行业获取外资和先进的专业技术知识，这非常不利于中国提高国内勘探成功率和进行生产的需要。虽然中国国务院于 2017 年 5 月公布了期待已久的油气改革方案并出台了高级别指导方针，同时还发布了促进外商投资的进一步通知，例如第 39 号通知以及 2017 年修订的《外商投资目录》，但是有关部门尚未提供详细的实施计划和时间表。此外，获取上游油气开发的环境许可的流程（包括从新的大型资本项目到通过钻井来支持日常运营）变得越来越难以预测，导致业界担忧这种情况对现有的生产目标、项目经济以及对未来的扩张和投资机会产生负面影响。商会认可中国国务院付出的努力，并且促请国家发改委、国土资源部和其他有关政府部门加快推进放宽上游矿区准入、取消限制、提高发放许可效率所需的政策更改和立法改革，并为国际石油公司提供财政和税收上的优惠。同样重要的是，国有石油公司采纳双赢的思维模式并提供更具吸引力的上游发展机会，以此激励国际石油公司增加在华的资本和技术投资。

### 常规的油气上游竞标活动

在 2017 年中国的海洋许可招标中，中国首屈一指的国有海洋石油公司中海油为外国企业提供了在中国南海面积达 47270 平方千米的 22 个能源勘探区段。其中的 17 个区段位于浅水区且靠近现有的油田，这表明中海油将其重点转向与全球勘探趋势一致的低成本、低风险的逐步勘探战略。然而，这 22 个区段中有 10 个是从之前 2014 年和 2016 年的失败竞标中回收回来的。

为进一步吸引业界对投标的兴趣以及鼓励海上勘探，在 2017 年中海油进一步采取了一项措施，放宽了针对在技术和经费上都要求较高的高压 / 高温（HP/HT）、深海和深水库能源区段的财务条款。通过如延长勘探期、不允许在第一第二勘探阶段进行放弃以及变换在发展阶段中海油和外国承包商之间支付约定定金的时间和产量分成比例，大大提高了灵活性。无论是单独的还是与国际石油公司组成联盟的金融机构也得以作为非经营者参与投标。

在有利的投标财务条款以及石油价格回升的鼓励之下，南海的勘探活动数量已开始小心翼翼地攀升。不过，由于

the fiscal terms for the technically and financially demanding HP/HT, deep-water and deep-reservoir blocks. More flexibility had been provided by measures such as extending exploration periods, allowing zero relinquishment during the first and second exploration phases, and varying the timing of the signature bonus payment and production sharing percentages between CNOOC and the foreign contractors in the development phase. Financial institutions, either alone or in a consortium with IOCs, were also allowed to bid as non-operators.

Encouraged by the favorable fiscal terms of bidding and combined with the price recovery of oil, exploration activities have been cautiously increased in the South China Sea. However, overall most IOCs remain conservative owing to the lack of attractive opportunities offered in the bid round. There has been even less progress in the conventional onshore licensing round blocks. In February 2017, the Ministry of Land Resources (MOLAR) announced plans for a second round of licensing that would offer up to 30 blocks in Xinjiang to domestic companies. However, only five blocks were eventually offered in late 2017. AmCham China believes such efforts are unlikely to attract substantial interest from non-NOC players, unless larger and better acreage is offered.

### *Shale Gas*

Currently, China's shale gas exploration and development activities are concentrated primarily in the Sichuan, Chongqing, Yunnan, and Guizhou regions. In August 2017, MOLAR released updated statistics on China's shale gas exploration and development. According to MOLAR, at the end of 2016 the proven in-place gas reserves in the Sichuan Basin and its periphery of the Lower Paleozoic Silurian Longmaxi marine shales was estimated at 764 bcm (~27 TCF). Total shale gas production from China, on the other hand, is limited (totaling 7.9 BCM or 278 BCF in 2016), mainly from the Sichuan Basin operated by Sinopec and the China National Petroleum Corporation. The rest of the region has undergone less exploration than Sichuan, and uncertainties remain over the discovery size and geological characteristics.

However, the main issues impeding China's shale gas development are related to land ownership and access to better acreage. As land owners do not own mineral rights, companies need to work with incumbent NOCs or wait to bid in licensing rounds for the exploration rights to a shale block in order to access the land. Although domestic non-state-owned companies can participate in shale gas licensing rounds, foreign companies are required to partner with domestic companies in order to bid. Such restrictions impose an entry barrier to more experienced foreign shale gas companies. While it was encouraging to see that in July 2017 the Chinese State Council issued a new policy allowing IOCs to bid on unconventional shale blocks, the relevant policies regarding implementation within bid rounds have yet to be

developed. AmCham China recommends providing greater access to shale blocks to enable more active IOC participation and so accelerate the development of unconventional energy in China.

Another issue facing China's shale gas development is the overall development plan (ODP) requirement. The current model for production sharing contracts (PSCs) indicates that an ODP should include such data as recoverable reserves, development well pattern, production profiles and economic analysis. However, significant new information often arises after approval of an ODP during the development period and after shale formation drilling has already started. To maximize shale formation productivity, an ODP must be sufficiently flexible to allow companies to promptly adjust the development of shale formations in response to newly acquired information. This flexibility is essential to success in shale gas development. AmCham China therefore recommends that the ODP be a non-binding guidance document serving as an indicator for the direction of shale gas development, rather than a mandatory governing document.

## US-China Energy Cooperation

Cooperation in the energy sector has been a highlight of US-China relations during 2017. A wide range of technical and policy exchanges, workshops, pilot projects, and joint research projects were undertaken, many focusing on clean energy and energy security. These efforts range from multi-year work plans, national-level forums, and government agency efforts, to new initiatives led by US mayors and governors aimed at increasing cooperation with the Chinese government on climate change and clean energy projects.

Clean energy is a major theme in global affairs and China has acted accordingly with its commitment to climate change and to reducing its carbon footprint by becoming the world's largest renewable energy investor, with the largest installed wind and solar capacities of any country. Energy Secretary Rick Perry stated during his June 2017 trip to Asia that the US and China have "extraordinary opportunities" to work together on clean energy. In more detailed remarks, he mentioned LNG, nuclear energy, carbon capture, and renewables as specific areas of mutual interest.

Given the Trump administration's decision to withdraw from the Paris Agreement on climate change, US state and local governments and non-government actors are becoming increasingly involved. California Governor Jerry Brown signed an agreement with China to work together on reducing emissions and met with President Xi Jinping to discuss economic opportunities between China and California in connection with clean energy. The US-China Energy Efficiency Forum kept up its efforts for collaboration. In addition, the US-China Clean Energy Research Center is continuing to pursue ongoing research and discussion on five tracks: advanced coal technology; energy efficiency of

招标缺乏具有吸引力的机会，大多数国际石油公司仍然持保守态度。

常规的陆上许可招标区段甚至是进展甚微。2017年2月，国土资源部宣布了第二轮许可招标的计划，打算向国内企业提供多达30个的新疆能源区段。然而，最终在2017年底实际上仅有5个区段受青睐。商会相信，除非提供更大更好的矿区，否则付出的这些努力不太可能激起非国有石油公司的浓烈兴趣。

## 页岩气

目前，中国的页岩气勘探开发活动主要集中在四川、重庆、云南、贵州等地区。2017年8月，国土资源部发布了中国页岩气勘探开发的最新统计数据。据国土资源部统计，截至2016年底，在四川盆地及其外围的下古生界志留系龙马溪海相页岩中已被证实的天然气地质储量估计达到764亿立方米（~27万亿立方英尺）。另一方面，中国的页岩气总产量有限（2016年合计为7.9亿立方米或2780亿立方英尺），主要源自中国石化和中国石油天然气集团经营的四川盆地。其余地区的勘探程度低于四川且探索发现的规模和地质特征仍然存在不确定性。

然而，阻碍中国页岩气开发的主要问题与土地所有权和优质矿区的准入有关。由于土地所有者没有采矿权，企业需要与现有的国有石油公司合作，或是在许可招标中等待竞标申办页岩区段的勘探权之后才能获得该土地的准入许可。虽然非国有的内资企业可以参与页岩气的许可招标，但是外国公司需要与内资企业合作才能参与竞拍。这些限制对经验更丰富的外国页岩气企业构成了准入壁垒。虽然2017年7月中国国务院颁布的振奋人心的新政策允许国际石油公司竞标非常规页岩区段，但是在招标活动中实施的有关政策却仍未制定。商会建议为更多有前景的页岩区段放宽准入许可，使国际石油公司得以更积极地参与业务，从而加快开发中国的非常规能源。

总体开发计划的要求是中国页岩气开发面临的另一问题。根据目前的产量分成合同模式，总体开发计划应包括可采储量、开发井网、开采曲线和经济分析等数据。然而，总体开发计划获批后，在开发过程中以及页岩地层钻探开始之后经常会出现重要的新信息。为使页岩地层的生产力达到最大化，总体开发计划必须具有足够的灵活性，以便企业能够根据最新获得的信息及时调整页岩地层的开发。这种灵活性对页岩气的成功开发至关重要。因此，商会建议将总体开发计划作为预测页岩气开发方向的非约束性指

导文件而非强制性的管理文件。

## 中美能源合作

能源行业的合作一直是2017年中美关系的一个亮点。各种的技术和政策交流会、研讨会、试点项目和联合研究项目都在进行中，当中许多活动都重点关注清洁能源和能源安全。这些交流合作包括多年工作计划、国家级论坛和政府机构所付出的努力，以及美国市长和州长带头就气候变化和清洁能源项目与中国政府实行合作的种种新举措。

清洁能源是一个重大主题。作为全球风能和太阳能装机容量最大的国家，中国还通过成为全球最大的可再生能源投资者来果断践行对气候变化和减少碳足迹的承诺。美国能源部长里克·佩里（Rick Perry）在其2017年6月的亚洲之行中表示，美中双方在清洁能源合作方面拥有“非比寻常的机会”。他还更为详细地提到，液化天然气、核能、碳捕获和可再生能源是两国共同感兴趣的领域。

随着特朗普政府选择退出关于气候变化的《巴黎协定》，美国联邦政府和各地方政府以及非政府组织的参与度越来越高。加利福尼亚州州长杰里·布朗（Jerry Brown）与中国签署协议致力于合作减排，并与习近平主席会面讨论中国与加利福尼亚州在清洁能源方面的经济机遇。中美能效论坛最近继续在科罗拉多州的丹佛举行。此外，中美清洁能源联合研究中心继续从5个方面开展已在进行中的研究和讨论：先进的煤炭技术、建筑能效、清洁汽车、水资源与能源技术以及商用车能效。

在国家层面上，液化天然气贸易被强调为2017年中美全面经济对话下“百日行动”计划的一个重要组成部分。华盛顿方面对此表示有兴趣，因为从美国向中国出口液化天然气有助于平衡双边贸易，促进中国在清洁能源方面的投入，并且借助从煤炭转向天然气来改善空气质量。在美国总统特朗普访华期间，提出的三项重要的液化天然气能源交易为中国在西弗吉尼亚州和阿拉斯加州的能源投资以及从切尼尔能源公司（Cheniere Energy）进一步进口液化天然气的举措奠定了基础。虽然这些交易可能具有一定重要性，但它们目前只是一些不具约束性力的谅解备忘录，而不是最终签订的合同。尽管如此，通过大力满足中国的供热需求并丰富对华能源供应商的种类，这些协议还将进一步联结中美两国，从而增强能源安全。商会相信，两国将在2018年进一步发展双方的液化天然气合作伙伴关系。



buildings; clean vehicles; water and energy technologies; and commercial truck efficiency.

At the national level, LNG trade was highlighted as a key component of the 100-Day Action Plan of the US-China Comprehensive Economic Dialogue in 2017. The US government has shown greater interest, given that LNG exports from the US to China can help to balance bilateral trade, contribute to China's clean energy efforts, and improve air quality by switching from coal to natural gas. Three important LNG energy deals were proposed during US President Trump's trip to China, paving the way for Chinese energy investment in West Virginia and Alaska, as well as for further imports of the LNG from Cheniere Energy. While these deals are potentially important, they are currently only non-binding Memoranda of Understanding (MOU), rather than finished contracts. Nonetheless, such agreements would further connect China and the US by supplying more of China's heating needs and diversifying its energy suppliers, so bolstering energy security. Our members believe this LNG partnership between the two countries will stimulate further growth in 2018.

## US-China Oil and Gas Industry Forum

The US-China Oil and Gas Industry Forum (OGIF), first established in 1997, is a cooperative and ongoing initiative between the Chinese and US governments. It provides a platform for the two countries to explore solutions to existing problems and find opportunities for bilateral collaboration, while focusing on the outlook and trends for the oil and gas industry. AmCham China sees the OGIF forum as an important communication platform and encourages active participation by all relevant stakeholders.

The 17th OGIF was held in Ningbo, Zhejiang on November 15-16, 2017. The meeting was jointly organized by China's National Energy Administration, the US Department of Energy (DOE), and the US Department of Commerce, and invited government officials and companies from both countries to exchange views on new opportunities for Sino-American cooperation in the oil and gas industry. The forum focused on two key themes: to upstream technology cooperation and improve LNG trade between the US and China. The host of this year's OGIF, Li Fanrong, Deputy Administrator of the National Energy Administration, and Rob Smith, the Acting Deputy Assistant Secretary of Energy for Oil and Natural Gas, spoke very positively about the two countries' in-depth discussions and huge potential for cooperation in the oil and gas sector, from upstream to downstream.

Advances in shale oil extraction technology and techniques in the US have rapidly increased production while also reducing costs. As Greg Leveille, ConocoPhillips' Chief Technology Officer (CTO) pointed out at the OGIF, the US shale renaissance started with a challenging and modest resource base, similar to that held by China today. However,

ingenuity and innovation enabled the US oil and gas industry to rapidly expand production. AmCham China shares his belief that China can benefit from the US energy renaissance and many opportunities exist for the two countries to work together to innovate and increase production and supply to meet China's ever-expanding energy needs.

## National Emissions Trading System in China

In December 2017, China announced long-awaited plans to launch its national emissions trading system (ETS), and so create the world's largest carbon market. This initiative builds on the 13th Five Year Plan for Greenhouse Gas (GHG) Control and Power Sector Development (2016-2020) released on November 7, 2016. It also takes into account ten years of emissions trading experience, initially accumulated through the Kyoto Protocol's Clean Development Mechanism (CDM), and more recently through seven pilot carbon markets in Beijing, Tianjin, Shanghai, Guangdong, Shenzhen, Hubei and Chongqing since 2013. In January 2016, the NDRC circulated a notice on China's national emissions trading system to the Civil Aviation Administration of China, all provincial development and reform commissions (DRCs), major industry associations, and relevant state-owned enterprises (SOEs). When fully operational in several years, the system will extend to cover eight sectors (power, petrochemicals, chemicals, iron and steel, non-ferrous metals, building materials, pulp and paper, and aviation) and 18 sub-sectors which consume over 10,000 tons of coal equivalent per year. By September 2017, the cumulative allowance trade volume in China's emission markets, measured in carbon dioxide equivalents, reached 197 million metric tons, with an aggregate transaction value of approximately RMB 4.5 billion.

The creation of a Chinese ETS has major implications for climate policymaking around the world and will substantially change the dynamics and status quo of current carbon markets. With an expected cap size of at least four billion metric tons, China's ETS will be twice the size of the EU's ETS and larger than all existing carbon markets combined. The presence of a national carbon market in China, the world's largest emitter of greenhouse gases and a key player in world trade, has the potential to increase the scale of climate action through carbon markets, which will ultimately support implementation of the Paris Agreement.

China's ETS is likely to face challenges in critical areas such as ensuring compliance and enforcement, fundamental data transparency, and applying uniform rules on monitoring, reporting, and verification across the country. AmCham China encourages policymakers in China to take advantage of the ample experience gained by countries and companies already dependent on a carbon market. China's policy approaches to emissions trading will also provide new insights and lessons for mature and developing ETSs.

## 中美油气工业论坛

中美油气工业论坛（论坛）于1997年首次启动，体现了中美两国政府为合作而付出的持续努力。它为两国提供了一个平台，供双方探讨解决双边合作的现存问题和机遇，同时也重点关注油气行业的前景和趋势。商会将论坛视为重要的沟通平台，并鼓励所有的利益相关方积极参与其中。

第17届中美油气工业论坛于2017年11月15日至16日在浙江省宁波市举行。由中国国家能源局、美国能源部和美国商务部共同举办的论坛邀请两国的政府官员和企业就中美在油气行业的合作新机遇交换意见。论坛侧重于两个关键主题：① 上游技术合作；② 中美之间的液化天然气贸易。今年的论坛主持人即中国国家能源局副局长李凡荣先生与美国能源部主管石油和天然气的助理部长罗布·史密斯（Rob Smith）先生对两国的深入探讨和油气行业从上游到下游的巨大合作潜力给予了非常积极的评价。

美国在页岩油开采技术和工艺上的突破已经迅速提高了页岩油的产量，同时也降低了成本。正如康菲石油公司的首席技术官格雷格·列维尔（Greg Leveille）先生在论坛上所指出的，就像今天的中国一样，美国页岩开发的复兴在初期面临各种挑战且资源量并不充足，但是智慧和创新使美国油气行业得以迅速扩大生产。商会赞同他的信念，认为中国可以从美国的能源复兴中获益，而且两国有很多机会去携手创新以及进一步发展生产和增加供应，从而满足中国不断增长的能源需求。

## 中国的碳排放交易体系

2017年12月，中国宣布了一项期待已久的计划，将启动全国碳排放交易体系，从而打造全球最大的碳排放交易市场。该倡议的确立是以2016年11月7日发布的《温室气体控制和电力发展“十三五”规划（2016–2020年）》为基础，同时也是基于十年的碳排放交易经验。国内碳排放交易最初是通过《京都议定书》项下的清洁发展机制（CDM）来实行，后来自2013年起又在北京、天津、上海、广东、深圳、湖北和重庆这七个省市开放碳排放交易市场试点。2016年1月，国家发改委向中国民用航空局、各省市、主要行业协会和有关国有企业发布了关于全国碳排放交易体系的通知。该体系在未来几年全面投入运作后，将覆盖8个行业（电力、石化、化工、钢铁、有色金属、建材、造纸、航空）以及每年消耗1万吨标准煤以上的18

个子行业。到2017年9月为止，中国碳排放市场的排放权配额交易量累计达到1.97亿吨二氧化碳当量，总成交价格约为45亿元人民币。

中国碳排放交易体系的建立对全球气候政策的制定具有重大意义，并且将大大改变当前碳排放交易市场的动态和现状。中国的碳排放交易体系规模预计至少达到40亿吨，将是欧盟碳排放交易体系规模的两倍，大于所有现存的碳排放交易市场的总和。中国是全球最大的温室气体排放国，也是世界贸易的主要参与者，全国碳排放交易市场使其有机会扩大气候行动的范围，最终将促成《巴黎协定》的实施。

中国的碳排放交易体系在一些关键领域中可能会面临挑战，比如合规和执法上的保证、基本数据透明度以及全国统一的监管、报告和核查规则。商会鼓励中国决策者借鉴已经启用碳排放交易市场的国家和企业的丰富经验并从中获益。中国的排放权交易政策也将为成熟的以及尚处于发展阶段的碳排放交易体系提供新的见解和经验教训。

## 可再生能源（风能、太阳能、能源存储等）

中国顺利引进的可再生能源主要以风能和太阳能为主。然而，由于当地政府对区域发电功率交换（互联）的动态了解不深，中国可再生能源发电厂的维护和管理计划因而尚未得以明确；因此，中国可再生能源的可持续性就得不到保证。此外，因为当地有保护国内企业的趋势，外国企业很难直接进入中国市场。商会建议，致力于支持国内能源安全和能源弹性的中国中央及地方政府应与专攻可再生能源和发电功率互换的美国企业就企业所开发新技术展开对话。

## 海洋环境保护法

2016年9月，国务院发布了《海洋石油勘探开发环境保护管理条例（修订草案征求意见稿）》（“草案”），以征求公众意见。草案提出了几项关键的新监管规定，其中包括：① 一切与海洋石油勘探开发有关的环境影响评价必须向社会公开征求意见，之后才能提交政府审批；② 按溢油量将溢油事故划分为四类（从特大到普通）；③ 负责监督海上溢油事故对海洋生态造成的损害的政府部门有权代表国家提出损害赔偿；④ 政府将根据溢油事故类别所对应的比例加重对海上油污事故的处罚。此外，2017年11月全国人民代表大会常务委员会通过了修订《海洋环境保

## Renewable Energy

Renewable energy in China has been advancing, particularly in the form of wind and solar power. However, plans for maintaining and managing China's renewable energy power plants are unclear, as local governments do not understand enough about the dynamics of regional power interchange (interconnection). The sustainability of renewable energy in China is therefore not guaranteed. Furthermore, foreign companies are finding it difficult to enter China's market directly, due to the tendency towards domestic protection of Chinese companies. AmCham China recommends dialogue between new technologies developed by US companies specializing in renewable energy and power interchange, and Chinese local and national governments looking to support China's energy security and resilience.

## Offshore Environmental Law

In September 2016, the State Council issued a draft revision of the "Regulations Regarding Environmental Protection in Offshore Oil Exploration and Development" (Draft Revision) for public comment. The Draft Revision provides several key new regulatory provisions including: all environmental impact assessments (EIAs) related to offshore oil exploration and development must be subject to public comment before submission to the government for review and approval; four categories of oil spill accidents are designated based on spill volume (ranging from extremely serious to average); government authorities overseeing damage and loss to the marine ecology due to offshore oil spill accidents will have the right to make claims for damages on behalf of the state; and penalties issued by the government for offshore oil pollution accidents will be increased by a designated percentage based on the category of the oil spill accident. In addition, in November 2017, the Standing Committee of the National People's Congress adopted a resolution to amend the Marine Environmental Protection Law in order to strengthen the management of pollution discharges into the sea and the protection of the marine environment. The "Administrative Regulations on the Discharge of Wastes into the Ocean" was also amended in March of 2017.

AmCham China supports the Chinese government's aim of providing further protective measures for the benefit of the marine ecology. However, our members urge the Chinese government to ensure that implementation of the Draft Revision and the new pollution charge policy does not unnecessarily impede the normal EIA approval process or create a counterproductive impact on legitimate business activities, and that the evaluation of oil spill accidents be conducted fairly and conclusively.

## Recommendations

### *For the Chinese Government:*

- Pursue policy changes and advance the legislative reforms necessary in the oil and gas sector to expand access to upstream acreage, remove restrictions, increase permitting efficiency, and provide fiscal and taxation incentives to attract upstream IOC investors.
- Adopt a win-win mindset and offer more attractive upstream opportunities to motivate IOCs to increase capital and technology investment in China.
- Continue to support the SHPGX and create a positive and effective environment for its development by encouraging more volumes to be placed on the exchange.
- Set a firm schedule to regulate the pipeline business and ensure their independence from their upstream parent companies.
- Reduce gas VAT in general. Further relax LNG VAT rebate policy without price conditions and ensure that all (whether importers or projects in China) are treated equally in order to cultivate the gas market and increase the overall competitiveness of LNG.
- Encourage the import of LNG from various sources, including the US, to further diversify the existing portfolio and ensure LNG supply security.
- Continue to support the development and utilization of gas-fired Combined Heating Power units to replace coal in both power and heating sectors to reduce air pollution.

### *For the US Government:*

- Identify and encourage opportunities to share US best practices with relevant Chinese government entities. For example, open access in the US to upstream acreage and resources and midstream infrastructure, as well as its public availability of data, have attracted high levels of investment and led to technological innovation, resulting in the successful development of unconventional resources.

### *For Both Governments:*

- Increase discussions between the two governments and industry on advancing cooperation on renewables, including in the areas of wind, solar, energy storage, and ethanol fuel.

护法》的决议，以此加强海上排污管理和海洋环境保护。《海洋倾废管理条例》也于 2017 年 3 月接受了相关修订。

商会支持中国政府进一步提供有益于海洋生态的保护措施。不过，商会促请中国政府确保草案及污染收费新政策的实施不会对正常的环境影响评价审批流程造成不必要的阻碍或是对合法的经营产生不利影响，而且溢油事故应受到公正确凿的评估。

## 建议

### 对中国政府：

- 实行政策变革并推进油气行业所需的立法改革，以扩大上游矿区的市场准入，取消限制，提高发放许可的效率，并采取财税激励措施来吸引上游的国际石油公司投资者。
- 继续支援上海石油天然气交易中心，通过激发更多在该交易中心进行的交易量，为其发展创造积极有效的环境。
- 制定明确的企业计划来规范管道企业，并确保这些企业保持独立于其上游母公司。
- 总体减少天然气增值税。进一步放宽没有价格条件的液化天然气增值税退税政策，确保对进口商和国内项目均一视同仁，从而开发天然气市场，提高液化天然气的综合竞争力。
- 鼓励从包括美国在内的各种渠道进口液化天然气，以进一步丰富现有的供应商组合，确保液化天然气的供应安全。
- 采纳双赢的思维模式，提供更有吸引力的上游机会，以此激励国际石油公司增加在华资本及技术投资。
- 继续支持燃气热电联产机组的开发和利用，从而在电力和供热行业取代煤炭的使用，减少空气污染。

### 对美国政府：

- 寻求机会并鼓励与中国政府有关部门分享最佳的实践经验。例如，通过开放上游矿区和资源、

中游基础设施的准入以及公开相关数据，美国吸引了高额投资并促成了技术创新，非常规资源因此得以成功开发。

### 对两国政府：

- 加强两国政府与业界关于推进可再生能源合作的对话，其中涉及的领域包括风能、太阳能、能源存储和乙醇燃料等。

# Real Estate

## Introduction

The real estate sector is a key driver of growth in China. Its contribution is not limited to the construction and sale of property, but also impacts the production and sale of key building materials, such as steel and cement, as well as household goods. The real estate sector grew at a fast pace in 2017. New home prices rose in 50 of the 70 cities tracked by the government in the first half of the year. However, the upward growth rate slowed in the second half of 2017. Tighter monetary policy dampened sales and construction in smaller cities which had offset the impact of restrictions in the large cities during the first six months of 2017.

## Ongoing Regulatory Issues and Recent Developments

### *Foreign Development Access Barriers*

No new regulations addressed specifically to foreign investment in the real estate industry were issued in 2017. However, the 19th Party Congress report stated that “China will further open the service sector and protect the legitimate rights and interests of foreign investors; all businesses registered in China will be treated equally.”

### *Decentralization of Chinese Cities*

Faced with congestion and increasingly large populations, Beijing, Shanghai and other Tier I cities aim to maintain growth by expanding beyond the city center. In 2017, decentralized submarkets were active, including Beijing’s Wangjing area, Guangzhou’s Pazhou area, and Shenzhen’s Houhai Headquarters Base. The submarkets offer rent advantages and new, high-quality properties that have attracted many tenants who wish to expand, consolidate, or upgrade their office space. The traditional CBD can no longer contain a city’s increasingly varied office demand.

According to a Jones Lang LaSalle report on Shanghai’s decentralized office market, convenient transport access ranks first among firms’ top priorities in considering relocation, surpassing even rent prices. Over the past five years,

new metro routes have been key to improving connections between the established CBD and less central locations. Other factors contributing to the success of decentralized office space include the concurrent growth of nearby retail amenities, the presence of high-profile domestic and international tenants, attractive office ownership opportunities, and the emergence of CBD-like clusters.

The figures below represent the potential savings and the NPLCC (Net Present Lifecycle Costing) difference between Grade A CBD space and decentralized locations in China’s gateway cities. The gap has been significant enough to attract occupiers to decentralize their work stations.

### *NPLCC Difference between Grade A Space in CBD and in Decentralized Locations*

With the significant growth of decentralized office submarkets in China’s Tier I cities, office supply in decentralized locations is expected to outstrip that in mature submarkets. The supply forecast of office space given below suggests that at least half of new space over the next several years will be located in emerging submarkets.

### *Property Tax Assessments*

China offered no clear plan to implement a nationwide property tax in 2017. However, a high-level road map and principles on property tax have been outlined, including an indication that the tax will be based on “appraisal value.” In addition, authorities are to be granted more flexibility, which suggests that the process would be gradual and vary by city. Only Shanghai and Chongqing were chosen for a property tax pilot that has been running since 2011. Such a tax, common in nearly all developed countries, will eventually be effective throughout China, although it could take a decade or longer. Its emergence will be due to three reasons: first, a national system of property taxes would contribute to a sizeable and steady stream of revenue for local governments. Such taxes can help diversify local government funding sources, which local governments heavily rely upon revenue from land sales, while easing financial risks in various ways. Second, property taxes also offer the benefit of encouraging local governments to invest in the local market. Third, a property tax would discourage individual speculative investors from putting money into the housing market,

# 房地产

## 引言

**房**地产行业是中国经济增长的主要推动力。其贡献不仅在于房产的建造和销售，还会影响到诸如钢铁和水泥等重要建筑材料，以及家用物品的生产和销售。2017年，房地产行业经历了快速增长。2017年上半年，政府监测的70个城市中有50个城市的新房价格上涨。但是，增长速度在2017年下半年有所放缓。紧缩的货币政策抑制了小城市的房地产销售和建造，抵消了2017年上半年对大城市的限制的影响。

## 现存监管问题及最新进展

### 外商投资壁垒

2017年，中国没有专门针对外商房地产投资发布新规定。然而，十九大报告指出：“中国将扩大服务业对外开放，

并保护外商投资者的合法权益；所有在中国注册的企业都一视同仁”。

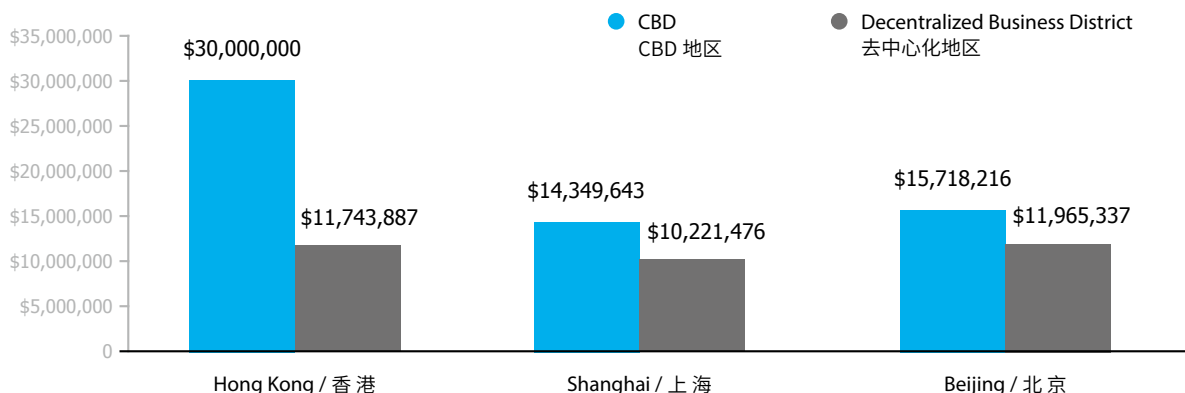
### 中国城市去中心化

面对交通拥堵和人口增长，北京、上海等一线城市都想要通过扩张城市中心来保持经济增长。2017年，去中心化的非核心子市场发展强劲，包括北京的望京，广州的琶洲和深圳的后海总部。这些子市场的租金优势和全新且高质的建筑吸引了那些计划扩张、整合和升级其办公环境的租户。传统CBD已无法满足城市日益多样化的办公需求。

以上海为例，仲量联行关于去中心化写字楼市场的分析报告《上海非中央商务区办公楼市场：起转之际，全新格局》显示，交通便利是公司搬迁的首要考量因素，甚至比租金价格更为重要。过去五年里，新的地铁线路在改善接驳已有的CBD与非核心地区起了关键作用。其他促进非核心写字楼发展的因素还包括附近零售设施的同步增长、

## NPLCC Difference between Grade A Space in CBD and in Decentralized Locations

A级CBD地区和去中心化地区的净现生命周期成本不同

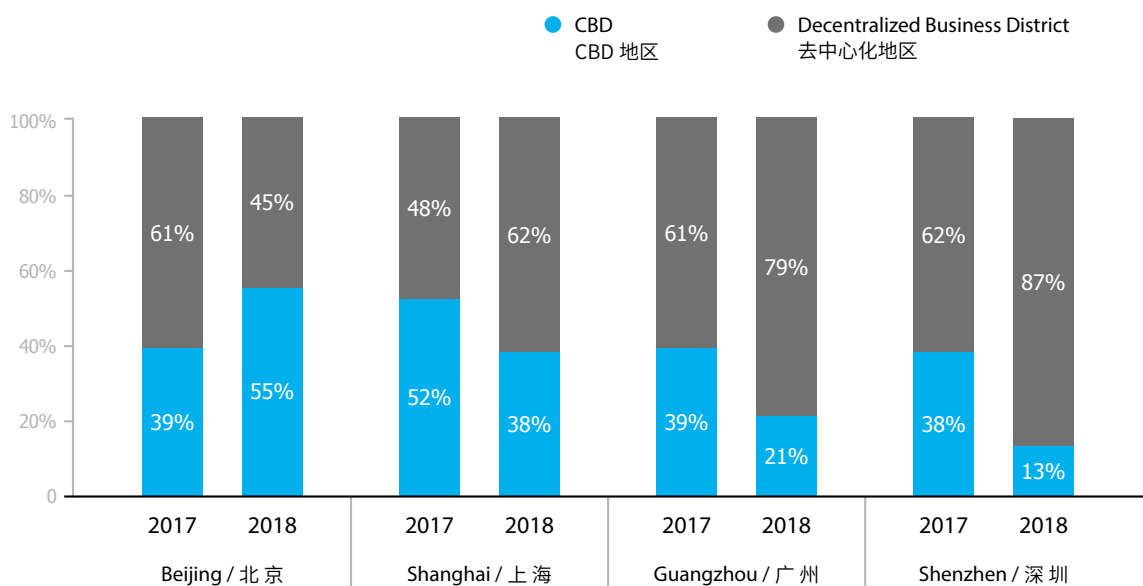


Source: CBRE Research, Aug 2017

来源：世邦魏理仕调研，2017年8月

## 2017-2018 New Supply Forecast

2017 至 2018 年新供应预测



Source: CBRE Research, Q3 2017

来源: 世邦魏理仕调研, 2017 年第三季度

which was a key message at the 19th Party Congress. This makes property taxes an effective way to calm the frenzied housing market in China's Tier I and II cities.

AmCham China understands that the current lack of a nationwide property register presents a dilemma for the introduction of a property tax, making it difficult to implement a property tax. However, in order to obtain a fair and adequate levy on properties, it would be better for China to build a nationwide system of registries for property ownership, which it can use to implement a property tax effectively while ensuring the accuracy of property rights and interests on a provincial and national basis.

### New Housing Regulations

#### The Development of the Rental Housing Market

In order to provide a long-term solution to the overheated real estate market and stabilize property prices, China has taken steps to boost the rental market. The central government promulgated an action plan in August 2017, indicating that China will launch pilot programs for building rental housing in 13 major cities, including Beijing, Shanghai, Guangzhou, Nanjing and Shenyang. In Beijing, the total residential land supply is to reach 6,000 hectares by 2021, 30 percent of which will be used for rental houses. Property

developers are quickly working to develop rental housing. For well-established US rental housing operators, the new focus presents an opportunity in the rental housing market. Moreover, to increase the success of rental housing, the government should provide tenants with the same access to public services and living environments as those enjoyed by homeowners. Beijing and Guangzhou have already announced new housing rental policies that include giving tenants and homeowners the same rights to educational resources. Tenants are also being allowed to register or transfer their *hukou* to government-subsidized houses. These actions are aimed at making rentals more attractive and increasing the number of tenants. Such measures are in line with curbing the sales market and promoting the rental market, in order to return China's residential market to a more stable condition in the medium to long term.

#### Curbs on China's Property Market

The Central Economic Work Conference in December 2016 stated that "houses are for living in, not for speculation." This was reiterated several times in 2017, such as in the report delivered by President Xi Jinping at the 19th National Congress of the Communist Party of China. In response, individual cities have adjusted housing policies at a local level in order to curb fast growing residential prices. Over 40 cities have introduced more than 100 new measures on home purchase restrictions and several cities even issued a

引人注目的国内外租户、拥有升值空间的写字楼所有权的投资机会和 CBD 集群的出现。

以下数据代表中国门户城市的 A 级 CBD 地区和去中心化地区在潜在储蓄和净现生命周期成本的不同之处。该差异足以吸引大家把他们的工作地点放在非核心地区。

### **A 级 CBD 地区和去非核心地区的净现生命周期成本不同**

随着中国一线城市的去中心化写字楼次级市场的显著增长，去中心化地区的写字楼供应预计将超过成熟市场。以下写字楼供应预测表明，接下来几年内至少一半的新写字楼将会出现在新兴次级市场。

### **房产税评估**

中国没有提供 2017 年实施全国房产税的明确计划。但是，政府已对物业税相关的路线图和原则做出概述，并指出房产税将以“市场价格”为基础。此外，各地政府将拥有更多自主权，同时意味着该过程将循序渐进，因城市而异。例如，只有上海和重庆被选为自 2011 年以来一直实施房产税的试点。房产税几乎在所有发达国家都很普遍，最终在中国也将全面推行，虽然这个过程可能长达十年或更久。房产税的出现可能有以下三个原因：首先，一个国家的房产税体系将有助于为地方政府带来可观的稳定收入。房产税可以帮助地方政府避免过度依赖土地财政收入，从而拓宽其资金来源，并缓解各种金融风险。第二，房产税推动地方政府投资于地方市场。第三，房产税将抑制个人投机投资者在房地产市场投入资金，这也是十九大的重要信息之一。房产税可以作为一种有效的方式来平息中国一线和二线城市疯狂的房地产市场。

中国美国商会（商会）了解到，当前全国范围的物业登记缺失对引入物业税带来困难，使物业税难以实施。但是，为了保证公平且充裕的物业征收，中国最好建立一个全国的产权登记体系，这不仅有利于有效实施物业税，还可以确保在省级和国家级的产权准确性。

## **新住住宅市场相关政策**

### **住宅租赁市场的发展**

为了给过热的房地产市场提供一个长期的解决方案并稳定房价，中国已经采取了多项措施来刺激租赁市场。中央政府在 2017 年 8 月颁布了一项试点方案，将在包括北

京、上海、广州、南京和沈阳在内的 13 个主要城市试点建设租赁住房。到 2021 年，北京的住宅用地总供应量将达到 6000 公顷，其中 30% 将用于租赁住房。房地产开发商正在迅速开发租赁住房市场。对于发展成熟的美国租赁住房经营者而言，这种新趋势带来了住房租赁市场的新机会。此外，为了推动租赁住房的成功，政府应该向租户提供与业主同样的公共服务和居住环境。北京和广州早已宣布新的住房租赁政策，其中包括向租户提供与业主相同的教育资源。本地租户也被允许将其户口登记或转移至政府补贴的住房。这些举措旨在鼓励租赁，并增加租户数量。这些措施旨在抑制销售市场，促进租赁市场发展，从而让中国的住房市场能够在中长期回归稳定的状况。

### **中国房地产市场的抑制**

2016 年 12 月召开的中央经济工作会议指出：“房子是用来住的，不是用来炒的”。中国政府官员在 2017 年多次重申该表述，例如习近平主席在其十九大报告中也强调了这一点。对此，许多城市调整了当地的购房政策，以抑制房价的快速上涨。已有 40 多个城市出台了 100 多项新的限购措施，有的城市为了管制市场甚至出台了了好几轮措施。这些措施包括需求方面的政策，比如提高最低首付来限制购房数量，以及提高购房者的资格要求等，针对供应方面的政策则有增加住房用地，以促进普通住宅和经济适用住房的发展。这些措施对中国的房地产市场带来了很大影响。包括北京、上海和深圳在内的大城市的购房热潮已经消退，新建住房的价格同比涨幅放缓。深圳和上海的同比价格指数自 2017 年 8 月和 9 月以来一直在下降。中国房地产市场的投资和投机热潮也有所减弱。中央政府应该继续在一线城市和热门二三线城市出台住房政策。地方政府则应根据各自城市的经济和社会发展情况来调整本地措施。

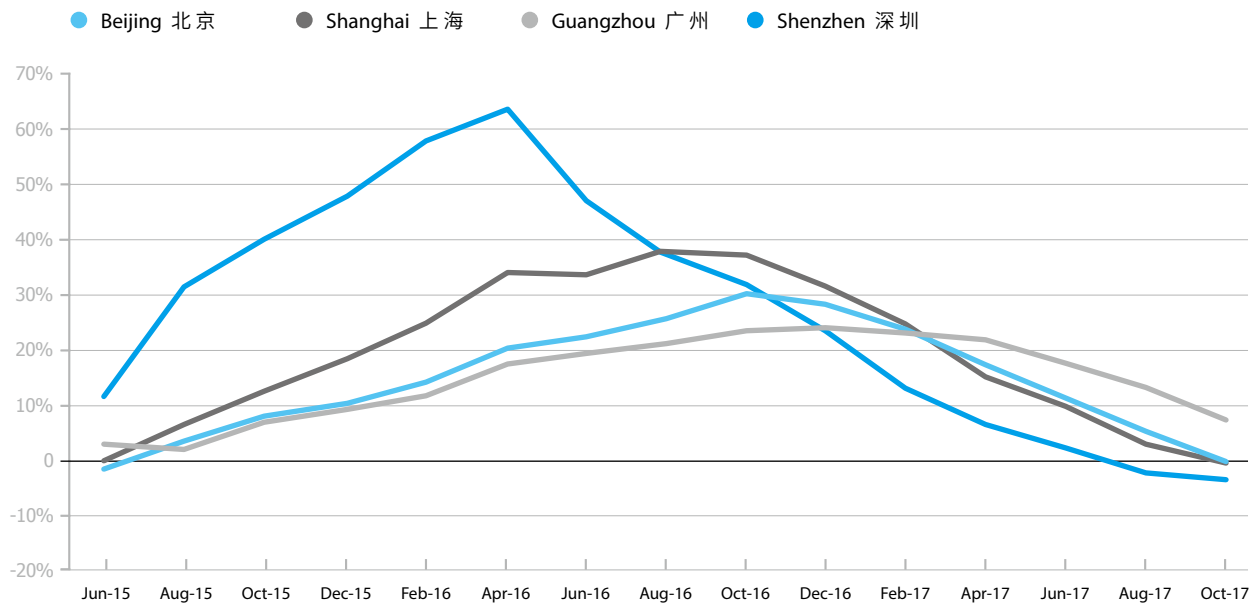
### **暂停施工的影响**

京津冀地区分别在冬季和春季实施严格措施，停止建筑工程，以此解决该时间段内由施工造成的空气污染。北京和河北的某些地区被要求在 2017 年 11 月 15 日至 2018 年 3 月 15 日期间停止工程施工，和房屋拆除工作，而天津的所有地区都被要求在 2017 年 10 月和 2018 年 3 月期间暂停此类工程。这些措施表明政府解决以上地区空气污染的决心。该项行动计划将在短期内推迟新建筑的竣工日期，尤其是办公楼和酒店等大型公共建筑。然而，考虑到限制措施的目的是为了缓解每年冬天长期困扰中国北方地区的空气污染问题，若这项政策每年都实施并延迟在建工程的



## New Commodity Housing Price Change in First-Tier Cities (Year-on-Year)

一线城市新建商品房价格变动情况（年同比）



Source: National Bureau of Statistics

来源：国家统计局

variety of rules to curb the market. These measures ranged from demand-side policies, such as increasing minimum down payments, limiting the number of home purchases, and raising the requirements for homebuyers' qualifications, to supply-side initiatives, including increasing residential land plots for the development of ordinary and affordable housing. Such measures have had a tangible impact on the China's property market. Home purchasing fever has subsided in major cities, including Beijing, Shanghai and Shenzhen, with slowing year-on-year increases in new residential housing prices. Shenzhen and Shanghai's year-on-year price indices have been declining since August and September 2017 respectively. Investment and speculation fever in China's property market has also abated. The national government should continue to increase housing regulations in Tier I cities, as well as popular Tier II and III cities. Local governments in their turn should adjust their own initiatives based on their respective cities' economic and social development.

### Impact of Construction Moratorium

The Beijing-Tianjin-Hebei region issued a strict order to stop construction work as a means of tackling pollution arising from construction during winter and spring. Specific districts in Beijing and Hebei have been ordered to stop construction work and housing demolition between November 15,

2017 and March 15, 2018, while all districts in Tianjin are to stop such work from October 2017 to March 2018. Such measures indicate the authorities' commitment to curb air pollution in these regions. This action plan will postpone the completion date of new properties, especially large-scale public developments such as office buildings and hotels, in the short term. However, considering that the regulation is designed to reduce the air pollution that affects North China every winter, the annual implementation of this policy will have a negative long-term impact on the property market, for example, by delaying the completion period of projects under construction.

### Technology Continues to Reshape Workspace

Wellness in the workplace has continued to gain importance in China. An increasing number of domestic enterprises are likely to move into a green office building, for reasons relating to company image, corporate responsibility, and overall cost savings. The government is also facilitating this trend. In March 2017, the Ministry of Housing and Urban-Rural Development (MOHURD) released "China's 13th Five-Year Plan of Green Building Development," stating that by 2020 at least 50 percent of all newly constructed buildings should be green-building certified. By August 2017, over 48 million sq.m. of projects across 54 cities had been Leadership in Energy and Environmental Design (LEED) certified.

竣工期，将对中国房地产市场造成长期的负面影响。

### 技术发展继续重塑工作空间

工作空间的健康环境在中国一直备受关注。由于公司形象、企业责任和整体成本节约等原因，越来越多的国内企业倾向于搬进绿色办公大楼。政府也在推动这一趋势。2017年3月，国家住房和城乡建设部发布的《中国绿色建筑发展“十三五”计划》表明，到2020年至少50%的新建建筑必须通过绿色建筑认证。截至2017年8月，全国54个城市超过4800万平方米项目获得LEED认证。北京、上海、广州和深圳的LEED认证建筑面积达2300万平方米，占全国51%。关于建筑使用者健康和福祉的WELL认证也在中国被逐渐采用。中国市场已经成为WELL认证的最快采用者，自该认证在中国推出的两年以来，登记和认证项目已达到104个，数量之多在全球排名第二。这些项目的总面积现已达到260万平方米，可与美国相媲美。

### 联合办公

现在，大公司越来越多地采用联合办公空间，以有效的解决工作场所问题。在过去，联合办公空间以初创企业和独立承包商作为潜在客户。然而，随着跨国公司在其房地产投资组合中寻求更多的灵活性，联合办公空间已成为实现这一目标的一种手段。鉴于许多市场目前处于创纪录高位，成本是推动企业对合作空间需求的一个因素。通过选择联合办公空间，跨国公司可以节省与新办公室装修相关的支出，并且可以免去限制企业快速增长的传统写字楼租赁条款，这些条款对快速增长的企业来说往往具有局限性。此外，联合工作空间的灵活性和协作性使它们对寻求促进内部和工作小组之间积极互动的企业具有吸引力。本身也处于新商业生态系统演化的前沿的联合工作空间还可以促进大型企业和初创企业之间的互动。

## 建议

### 对中国政府：

- 建立相关平台去密切监控去中心化的市场状况并避免在某些领域出现供过于求的情况。
- 继续增加对新兴的去中心化地区的交通基础设施和公共服务投资，并向开发商提供资金支持以推动独资项目和抑制短期战略。
- 为维护国家和地方的权利和利益，开发简便、公开的财产登记系统。

Beijing, Shanghai, Guangzhou, and Shenzhen had reached 23 million sq.m., accounting for 51 percent of the total certified in China. WELL certification, a standard related to the health and wellbeing of building users, is also being adopted. The Chinese market has become one of the fastest adopters of the WELL certification, and since its launch in China over two years ago, the number of registered or certified projects has reached 104, ranking China second in the world. The total area of these projects is now at 2.6 million sq.m., which is on a par with that of the US.

### *Co-working Spaces*

Co-working spaces are now increasingly adopted by large companies as an effective workplace solution. Traditionally, co-working spaces targeted start-ups and independent contractors as potential clientele. However, as multinational companies seek to add more flexibility into their real estate portfolios, co-working spaces have emerged as one means to achieve this. Cost is one factor driving companies' demand for co-working spaces, given many markets now stand at record highs. By opting for co-working spaces, multinationals can save on expenditures related to the fit out of new offices and can avoid the lease terms of traditional office buildings, which can be restrictive for a rapidly growing enterprise. Additionally, the flexible and collaborative nature of co-working spaces makes them attractive for corporates seeking to foster greater interaction within and between working groups. Co-working spaces can also facilitate interaction between large corporations and start-ups and are at the forefront of the evolution of a new business ecosystem.

## Recommendations

### *For the Chinese Government:*

- **Create a platform for closely monitoring the status of decentralized markets to avoid oversupply in certain areas.**
- Continue increased investment in transportation infrastructure and public services for newly decentralized areas and provide financial support to developers to promote wholly-owned projects and discourage short-term strategies.
- Develop readily and publicly accessible property registries to safeguard national and provincial rights and interests.



# Retail and E-Commerce

## Introduction

**T**he Chinese economy is on track to meet the 2017 growth target set by the Chinese government. At the 19th National Congress of the Communist Party of China last October a significant change in the theory of Party policymaking signaled a shift in focus from pure economic growth to a broader, “quality-based” notion of development. China is navigating a transition from an older, export-based and investment-driven economic model towards a growth path that is more oriented towards consumption and innovation. As such, the fundamental role of the retail and e-commerce sectors has gained significance as a means to contributing to and driving economic growth.

In 2017, the Chinese government continued its stated efforts to promote a “transparent and friendly environment” for the development of retail and e-commerce industries through a variety of policies and legislation. These included promoting innovative transformation of offline stores, further liberalizing market access, optimizing regulatory systems, streamlining administration, and promoting the integration of online and offline retail. Such initiatives have further strengthened the confidence of AmCham China members in seeing continued growth in China’s retail and e-commerce sectors.

AmCham China members believe that for China to fully benefit from these reforms, rigorous implementation of relevant policies and laws at all levels is crucial. Furthermore, increasing the consistency and foreseeability of policy development and legislative changes is important for optimizing China’s investment environment in the retail and e-commerce sectors.

## Ongoing Regulatory Issues

### *Pressure to Establish New WFOEs*

It is not uncommon for municipal or even district governments to require foreign retailers to set up wholly foreign-owned enterprises (WFOEs) in their jurisdictions. This stems from tax, investment, and political considerations, particularly the need to collect local income tax or improve statistical performance in total retail sales of consumer

goods, energy efficiency, and emissions reduction. Some governments may leverage promises of support or even administrative approvals as a bargaining tool. As a result, some large retailers with chain stores in China may have to operate scores of legal entities and value-added tax (VAT) reporting units in China.

These complex and redundant legal entity structures were built up under the pressure of local governments over the years and have resulted in undesirable impediments for AmCham China members, including higher effective corporate income tax rates and considerable increases in management and operational costs. This phenomenon discourages investment puts retailers at a competitive disadvantage, and continues to be among the greatest challenges for AmCham China members.

AmCham China is encouraged to note that these concerns have been recognized by the Chinese government. The General Office of the State Council released the “Opinions on Promoting the Innovative Transformation of Physical Retail Stores” (Guobanfa (2016) No. 78) on November 11, 2016, which re-emphasized that local governments cannot impede retailers from setting up non-WFOE entities in any form, and urged local authorities to fully implement relevant regulations on consolidating tax filings for head offices and branches.

AmCham China appreciates the efforts of the State Council, particularly the Ministry of Commerce (MOFCOM), to reduce real economic costs by eliminating administrative barriers at the local level. Our members are cautiously optimistic about these developments, which depend on thorough implementation in each province and municipality for their success.

Our members therefore urge the State Council to introduce additional mandatory regulations and policies to prevent local governments from using their administrative power to force retailers to establish new legal entities in their jurisdictions. Furthermore, AmCham China recommends that the National Development and Reform Commission (NDRC) and National Bureau of Statistics (NBS) further optimize current statistical methodologies, so as to avoid incentivizing local governments to establish unnecessarily large numbers of WFOEs.

# 零售和电子商务

## 引言

**中**国经济正在向中国政府制定的 2018 年增长目标迈进。去年十月在中国共产党第十九次全国代表大会上，中国共产党的决策理论发生了重大变化，标志着从纯粹的经济增长向更广泛的“质量”发展观念的工作重点转变。中国正在从传统的以出口为基础、以投资驱动的经济模式转变为更多以消费和创新为导向的成长路径。因此，零售和电子商务行业作为促进和推动经济增长手段的基础作用日益重要。

2017 年，通过制定各种政策和法律，中国政府继续努力，推动建立更加透明、友好的零售和电子商务产业发展环境。这些政策和法律包括促进线下门店的创新转型，进一步放宽市场准入、优化监管体系、简化行政管理、推动线上和线下零售的整合。这些举措使中国美国商会（商会）会员企业更加乐观，他们将在中国零售和电子商务行业获得持续增长。

商会会员相信，要使中国完全从这些改革中获益，在各个层面上严格贯彻实施相关政策和法律至关重要。此外，增加政策制定和法律变化的一致性和可预见性，对于优化中国零售和电子商务产业投资环境十分重要。

## 现存监管问题

### 设立新外商独资企业的压力

市政府甚至区政府要求外国零售商在其辖区内设立外商独资企业（“外资企业”）的做法并不少见。这一要求主要是基于税收、投资和政治方面考虑，尤其是需要征收本地所得税或者改善消费品零售和节能减排等领域的统计数据。有些政府会通过允诺提供支持（甚至行政审批便利）来换取谈判筹码。因此，一些在中国有连锁店的大型零售商不得不在中国经营大量法律实体和增值税申报单位。

在当地政府压力下，这些复杂烦冗的法律实体多年来不断增加，已经给商会会员带来了诸多困扰，包括企业所得税平均税率增高、管理和经营成本大幅增加等。这种现象有损投资意愿，使零售商处于相对劣势，因此这一问题仍然是商会会员面临的最艰巨的挑战之一。

商会对中国政府关注这些问题表示感谢。国务院办公厅最近发布了《关于推动实体零售创新转型的意见》（国办发〔2016〕78 号，2016-11-11）。文件再次强调地方政府不得以任何形式对连锁企业设立非企业法人门店和配送中心设置障碍，落实好总分支机构汇总缴纳企业所得税、增值税相关规定。

商会赞赏国务院（尤其是商务部）在消除各地行政壁垒、降低实体经济成本方面所做的努力。只有各省市能够贯彻实施相关工作，这些努力才能取得实效。商会会员企业对此持谨慎乐观态度。

因此，商会促请国务院制定强制性法律和政策，防止地方政府使用其行政权力强迫零售商在当地设立新的企业法人。此外，商会还建议国家发展与改革委员会（“发改委”）和国家统计局（“统计局”）进一步优化目前的统计方法，避免地方政府为迎合统计要求而设立大量不必要的外资企业。

## 产品质量

### 《产品质量法》

《产品质量法》最后一次修订是在 2009 年，明确了对产品生产者和经营者的要求。但是，此法未能区分生产者和经营者在相关处罚中应当承担的责任。

因此，即使零售商已经履行了所有法律义务，生产商却未能满足相关标准或者有欺诈行为（比如伪造证书），如果监管者在零售货架上发现假冒产品，受处罚的通常都是零售商。此外，全国企业信用信息公示系统于 2014 年

## *Product Quality*

### Product Quality Law

The Product Quality Law, last amended in 2009, specifies requirements for product producers and operators. However, the law still fails to distinguish between the liabilities of producers and operators regarding penalties.

As a result, when regulators find fake products on retail shelves, retailers are often penalized, even if they themselves have fulfilled all legal obligations and it is the producers who have failed to meet relevant standards or behaved fraudulently (e.g., by forging certificates). Furthermore, due to the establishment of the National Enterprise Credit Management Information System, which entered into effect on December 1, 2014 and which files and publishes all enterprise penalties, retailers also increasingly face unfair reputational damage.

AmCham China recommends that the National People's Congress (NPC) and the State Council revise the Product Quality Law to further define and distinguish the legal liabilities of operators and producers, so as to exempt retailers from penalties when it can be shown that they have fulfilled their obligations.

### Sampling Inspections

As the focal point of regulations shifts from regulating products after they are on the market to regulating them before they reach the market, sampling inspections of commercial quality have become a major means of commodity market regulation. Furthermore, sampling inspections may strengthen the supervision of commodities in circulation and protect the legitimate rights and interests of consumers more effectively.

AmCham China supports sampling inspections and has the following recommendations to make inspection results fairer and more objective:

- When an enterprise disagrees with an inspection result during sampling inspections by industry and commerce or quality supervision authorities, inspection authorities shall choose a qualified inspection body with nationally-recognized qualifications, other than that of the initial inspection body, to reexamine the samples.
- Regarding online sampling inspections by industry and commerce or quality supervision authorities, when samples for inspection obtained from a store are not authorized by the brand owner and there is a commercial quality dispute, the brand owner should cooperate with the sampling inspection authority to authenticate the product, while the retailer should bear responsibility for other matters.

## *Punitive Compensation System*

Professional faultfinders (PFFs) continued to be a key challenge for our members in 2017. PFFs actively seek out retail outlets and online vendors for mistakes in pricing, labeling, or product quality. PFFs sometimes extort retailers for compensation by threatening to report the problem to the government or media.

AmCham China recognizes that PFFs have improved some business practices. On the other hand, AmCham China believes the Punitive Compensation System (PCS), namely the institutionalized system that has led to the emergence of PFFs, needs to be improved so that more important issues are prioritized and effectiveness is improved.

Unofficial statistics show that the number of litigation cases has increased sharply in recent years, particularly since the implementation of PCS on food safety. Even lawsuits filed by PFFs on minor labeling problems have a high success rate. As PCS fails to differentiate between real risks and minor problems, PFFs take advantage of the loopholes to file an overwhelming number of lawsuits against minor defects, indicating that PCS needs to be optimized in order to better serve ordinary consumers' need for protection.

AmCham China urges the optimization of PCS by differentiating penalties between real issues and minor errors to discourage unreasonable compensation claims.

## *Commercial Electricity Pricing Reforms*

The Chinese government has pledged in a series of circulars to accelerate the pace of electricity price cuts so as to equalize treatment between the commercial and industrial sectors. AmCham China appreciates China's initiatives to roll out electricity pricing reforms to further open the electricity market and alleviate the cost burdens to the commercial sector.

Owing to the complexity of electricity pricing scheme across regions, it is not easy for a commercial enterprise to enjoy policy dividends in practice. Our members have conducted preliminary research on the effectiveness of the electricity price cuts on the commercial sector. Their results indicate that more research is needed to formulate comprehensive implementation rules that can be coordinated across regions to tackle practical issues, such as direct electricity purchase arrangements for the commercial sector and suitable pricing schemes.

## *E-Commerce*

AmCham China has been closely following the development of China's e-commerce legislation and we are encouraged to see that the second review of the draft E-commerce Law was published for public comment in November 2017. AmCham China and its members have discussed the law and proactively made recommendations. Our members

12月1日生效后，开始记录和公示企业受到的所有处罚，所以零售商受到的不公平的名誉损害越来越多。

商会建议全国人民代表大会（“全国人大”）和国务院修改《产品质量法》，进一步界定和区分经营者和生产者的法律责任，使零售商在有证据证明其履行了相关义务的情况下免受处罚。

### 抽样检查

随着监管重点从商品上市后的监管转变为商品上市之前的监管，商品质量抽样检查已经成为商品市场监管的主要手段之一。而且，抽样检查可以强化对流通商品的监管，有效保护消费者的合法权益。

因此，商会支持抽样检查，并做如下建议，以使检查结果更加公平和客观：

- 如果在工业、商业和质量监督部门的抽样检查中，企业对检查结果有异议，检查机关应当选择一家得到国家认可的有资质的检查机构（而非原检查机构）重新检查样品。
- 就工商部门和质量监督部门进行的网络购买产品抽样检查而言，如果检验样品来自未经品牌所有权人授权的店铺，在发生任何商品质量争议时，品牌所有权人应配合抽样检查机关鉴别产品真伪，而零售商则应承担其他责任。

### 惩罚性赔偿制度

2017年，职业打假人依然是商会会员面对的一个重要挑战。这些职业打假人积极寻找零售渠道和在线商家在定价、标签和产品质量上所犯的过错。他们有时会威胁把问题上报给政府或者媒体，以此对零售商进行敲诈。

商会赞赏职业打假人改善了一些商业行为。另一方面，商会认为惩罚性赔偿制度（PCS）是导致职业打假人出现原因，因此需要进行改善，这样才能优先考虑其他更重要的问题并提高效率。

非官方统计数据显示，近年来，特别是自食品安全惩罚性赔偿制度实施以来，诉讼案件数量急剧增加。职业打假人针对标签的小问题提出的诉讼也有很高的成功率。由于惩罚性赔偿制度不能区分真实风险和轻微问题，职业打假人利用这些漏洞针对轻微缺陷提出大量诉讼，这表明惩罚性赔偿制度需要进行优化以更好地满足普通消费者的保护需求。

商会促请优化惩罚性赔偿制度，通过区分实质问题和轻微问题之间的处罚来防止不合理的赔偿要求。

### 商业发电价格改革

中国政府承诺通过一系列通告加快电价下调的步伐，以平衡商业部门与工业部门的待遇。商会赞赏中国为进一步开放电力市场并减轻商业部门的成本负担而推行的电价改革的举措。

由于各地电价制度的复杂性，商业企业在实践中享受政策红利并不容易。商会会员已经对商业部门的电价下调的效果进行了初步研究。研究表明，需要更多的研究来制定全面的实施规则，以便跨地区协调处理实际问题，例如商业部门直接购电和适当的定价方案。

### 电子商务

商会一直密切关注中国电子商务立法的进展并很高兴地看到，电子商务法的草案二次审议稿于2017年11月发布，征集公众意见。商会及其会员对该法律进行探讨并积极提出建议。商会希望该法律的制定能够为电子商务的长期健康发展提供指导原则和制度保障。商会成员还鼓励中国政府有关部门继续提高透明度，建立公平合理的电子商务监管体系，制定配套法律法规。商会关于电子商务法草案二次审议稿的建议侧重以下两个方面：

#### 信息和数据共享

作为电子商务的主体，企业愿意协助国家有关部门依法提供必要的信息。然而，鉴于电子商务数据的范围和数量所固有的许多商业机密，商会促请规范和缩小相关规定的目的和具体信息要求。商会也促请政府在满足政府监管需求的基础上尽可能减小相关的数据请求量。

#### 主管部门和协调机制

商会支持国务院建立电子商务管理综合协调机制。此外，商会建议进一步明确牵头部门、主管部门及其职责，以形成统一的渠道，避免分散监管。



hope that the enactment of this law will provide guiding principles and system guarantees for the healthy long-term development of e-commerce. Our members also encourage the relevant departments of the Chinese government to continue to improve transparency and establish a fair and reasonable e-commerce supervision system in the creation of supporting laws and regulations. Our proposal for the second review of the draft E-Commerce Law focuses on the following two aspects.

### Information and Data Sharing

As the main body of e-commerce, enterprises are prepared to assist the relevant national departments in providing necessary information according to the law. However, in view of the many trade secrets inherently involved in the scope and volume of e-commerce data, we urge more specification and narrowing the purpose and specific information requirements in relevant regulations. We also urge that requests be limited to the minimum data that are most relevant to the needs of government supervision.

### Competent Authorities and Coordination Mechanism

AmCham China supports the establishment of a comprehensive coordination mechanism for e-commerce management by the State Council. Furthermore, we propose that that there be more clarification surrounding the lead departments, authorities and their responsibilities, in order to form a unified channel and avoid fragmented regulation.

- Optimize the PCS by differentiating punitive compensation between real issues and minor errors, discouraging unreasonable compensation claims, and promoting collective/public interest litigation. [NPC, State Council, CFDA, Supreme Court, SAIC]
- Compare the effectiveness of electricity pricing reforms in regions to formulate comprehensive implementation rules. [State Council, NDRC]
- Specify more precisely the purposes of data and specific data requirements in order to enable enterprises to coordinate with relevant government departments better while reducing the costs of compliance.
- In e-commerce management coordination mechanisms, clarify the role and responsibilities of different departments to avoid fragmented regulation.

## Recommendations

### *For the Chinese Government:*

- **Regulate the retail industry, including all business formats, under a unified regulatory system and consistently enforce standards across the whole of China.**
- Introduce mandatory regulations to prevent local governments from forcing retailers to set up new legal entities in their jurisdictions. [State Council, MOFCOM]
- Reform the current statistical methodologies relevant to local government key performance indicators to avoid incentivizing local governments to require establishment of more WFOEs. [NDRC, NBS]
- Revise the Product Quality Law to further define and distinguish the legal liabilities of operators and producers. [NPC, State Council]
- Optimize sampling inspection mechanisms to promote fair treatment of both retailers and producers. [AQSIQ, SAIC]

## 建议

### 对中国政府：

- 以统一的监管体系监管零售业（无论商业形式如何），统一全国的执法标准。
- 制定强制性规定，防止地方政府强迫零售商在其辖区内设立新的法律实体。[国务院、商务部]
- 改革目前与地方政府关键绩效指标相关的统计方法，避免地方政府要求设立更多外商独资企业。[发改委、统计局]
- 修改《产品质量法》，进一步确定和区分经营者和生产者法律责任。[全国人大、国务院]
- 优化抽样检查机制，使零售商和生产者受到更加公平的待遇。[国家市场监督管理总局]
- 通过区分实质问题和小错误之间的惩罚性赔偿，阻止不合理的赔偿要求，推动集体 / 公共利益诉讼来优化惩罚性赔偿制度。[全国人大、国务院、国家市场监督管理总局、最高法院]
- 比较各地区电价改革的效果，制定全面的实施细则。[国务院、发改委]
- 更准确地说明请求数据的目的和具体数据要求，以便企业更好地与相关政府部门进行协调，并降低合规成本。
- 在电子商务管理综合协调机制中，明确不同部门的角色和职责，避免分散监管。

# Sports

## Introduction

China recognizes the value of sports in society, and it is clear that the government is willing to invest resources in order to promote the sports industry. However, the current question is not how much to spend on sports, but on how to spend it. Since the establishment of modern China, the view has been that sports must serve the state, and funds for sports have accordingly been allocated to promote the nation's image both at home and abroad. This view is now changing, with more emphasis on the holistic effects of sports for the general public. This is an important development which the foreign sports industry can assist.

## Recent Developments

### *Development of Sports Management: Popular versus Elite Strategies*

The role of sports in China is apparent in the country's conventional sports management regime, known as Juguo Tizhi, which is based on the idea that sports are designed to ensure the health of society and to promote the state, both at home and abroad. More specifically, Juguo Tizhi is a sports management program designed to bring China national success through Olympic gold medals and achievements in other international competitions. For instance, the China National Games (CNG) has been established based on the Olympic organizational model. Provincial-level administrative units are required to send teams to the CNG, and as a result, provincial and lower level government officials devote more resources to train athletes with prospects for winning at CNG and perhaps going on represent to China in the Olympics. In terms of gold medals, the system seems to be working well, as indicated by the fact that at the 1988 Seoul Olympics China won just five gold medals but by the 2008 Beijing Olympics the figure had increased by 46.

It appears, however, that there is a changing mood toward this elitist sports strategy. In 2010, the China Daily stated that the cost for this success has been high. The General Administration for Sports (GAS) estimates that at the 2004 Athens Olympics the cost per gold medal was RMB 700

million when analyzed in terms of investment into the Juguo Tizhi system. They further criticized the economic efficiency of such public investment, by noting that China built spectacular venues to host the Olympics, while many students in local schools still lack a playground.

In 2010, sport intellectuals are beginning to analyze the importance of balancing the elite approach to sports with the market approach. Authors He and Xiong in the article entitled "Modes of and Choices for the Development of Competitive Sports in China" published in the Journal of Physical Education in 2010 wrote:

"Even though 'winning glory for the country' embraces the interests of the general public, [because] this kind of interest, on the one hand, depends on an abstract concept, i.e. 'the country'; and on the other hand, is limited within [the sphere of] spiritual needs, therefore this pure national and ideological interest will definitely [negatively] affect the interest of various stakeholders...[However, because] 'winning Olympic glory' is a public good that satisfies public needs, the State has to undertake the role of the major stakeholder (investor), while proactively seeking support from the society."

Richard Xiaoqian Hu in his Ph.D. dissertation entitled "An Analysis of Chinese Olympic and Elite Sport Policy Discourse in Post Beijing 2008 Olympic Games Era" said that the statement above includes the pre-condition of Olympic Glory so the suggestion is that there are no moves to replace Juguo Tizhi but to only rebalance its priority.

In March 2010, the government began to lay the groundwork for change. The State Council issued the "Guiding Opinion on Accelerating the Development of the Sports Industry in China" (Guiding Opinion), aimed at raising sports to a prominent strategic national position in the economy and underlining the government's commitment to transform the sports industry. The Guiding Opinion outlined the following objectives: a balanced development of recreational sports and competitive sports; encouragement of both domestic and foreign private investment in China's sports industry; exploration of the sports performance and recreational sports markets; and intensification of cultural and sports exchanges and cooperation with foreign countries.

# 体 育

## 引 言

**很**明显，中国认可体育的社会价值，政府也愿意投入资源推动体育产业。然而，目前的问题不是花多少钱在体育上，而是如何花这些钱。新中国成立以来，人们认为体育必须为国家服务，划拨的体育经费也相应地用于提升国家在国内外的形象。这一观点现在正在逐渐地变得更加强调体育对于民众的整体效应，这一重要变化是可以得到国外体育产业的协助的。

## 最新进展

### 体育管理发展：大众化与精英化战略

在中国，发展体育是“举国体制”，这充分体现在中国的传统体育管理体制中，并基于这样一种观点：即体育运动的目的是确保社会健康，在国内外提升国家形象。更具体地说，“举国体制”是一项体育管理项目，旨在通过奥运金牌和其他国际比赛的成就，使中国获得国家层面的成功。例如，全运会基于奥运组织模式建立，省级行政单位需要派遣队伍到全运会，所以，省级和下级政府官员会投入更多资源，训练有望在全运会获胜并可能在奥运会上代表中国队参加比赛的运动员。从金牌数量来看，该体制似乎运行良好。1988年汉城奥运会上，中国只赢得了5枚金牌，但在2008年北京奥运会上，中国的金牌总数增加了46枚。

然而，这种精英体育战略的形势似乎在发生变化。2010年，中国日报的文章指出，这种成功的成本一直很高。据体育总局估计，在2004年雅典奥运会上，根据对“举国体制”的投资分析，每枚金牌的成本为7亿人民币。体育总局进一步批评了这种公共投资的经济效益，指出中国为举办奥运会建造了一批豪华场馆，而当地学校的许多学生却连操场也没有。

2010年，体育界权威人士开始分析平衡体育精英论与市场论的重要性。何强、熊晓正在2010年发表在《体育学刊》上的文章《我国竞技体育发展模式及其选择》中写道：

“尽管‘为国争光’包含了大众利益，因为这种利益一方面取决于一个抽象的概念，即‘国家’；另一方面，受限于精神需求的范围内，因此这种纯粹的国家意识形态利益肯定会对各利益相关者的利益产生负面影响……（但是，由于）‘赢得奥运荣耀’是一项满足公众需求的公益事业，国家必须承担主要利益相关者（投资者）的角色，同时积极寻求社会支持”。

胡孝乾在其提交至拉夫堡大学的博士论文《北京2008奥运时代的中国奥运与精英体育政策话语分析》中指出，上述声明包含了奥林匹克荣耀的先决条件，他们的建议是，没有任何发展可以取代“举国体制”，只能重新平衡其优先级。

2010年3月，政府开始为体育改革奠定基础。国务院发布《关于加快发展我国体育产业的指导意见》（指导意见），旨在将体育提高到国家经济战略的重要地位，突出体现了政府对转变体育产业的承诺。指导意见概述了以下目标：休闲体育和竞技体育的均衡发展；鼓励国内外对中国体育产业的私人投资；探索体育表演和休闲体育市场；加强与国外的文化体育交流合作。

在体育总局2011年发布的《2011-2020年奥林匹克荣耀战略规划概要》中，胡教授进一步指出，体育总局也认识到重塑中国体育管理的重要性，并指出：

“我们应该继续体制创新，深化精英体育体制机制改革……加强宏观调控；进一步转变（体育管理部门）的职能，进一步分离管理与运作，进一步加强监督和公共服务的职能……（以）建立一个以政府为主导，能够充分发挥社会积极性的新型精英体

In the GAS' 2011 Summary of the Strategic Plan for Winning Olympic Glory 2011-2020, Hu further notes that even GAS recognizes the importance of reshaping sports administration in China. It states:

“We [should] continue the institutional innovation, deepen the reform of the system and mechanism of elite sport...reinforce macro control; further change the role [of sports administration departments], [further] separate administration and operation, [further] strengthen [the function of] supervision and public service ...; [in order to] 322 establish a [new] elite sports administration system that is mainly directed by the government and is able to fully utilise the enthusiasm of the society. [We should] further deepen the elite sport administration system, gradually establish an administration system that fits global [rules] and the requirement of the Socialist market economy, reinforce the development of, and the administration system concerning, National Sport Associations ... improve the administrative effectiveness and ability and the level of scientific management of National Sport Administrations.”

It is important to observe that the role of the government in sports administration remains important but it is clear that there is recognition that a new development track has been opened.

The momentum for change is continuing to grow. The view that public resources for sports should not be solely devoted to ‘national glory’ was reflected in institutional initiatives in October 2014 when the State Council promulgated the “Opinions on Accelerating the Development of the Sports Industry and Promoting Sports Consumption” (Opinions). The most important aspect of the Opinions are the sections that recognize implicitly that resources had been used to promote elite sports talent and that it was now necessary to increase the participation of the broader populace in sports.

AmCham China commends the State Council for directing more resources toward the popularization of sports. We also recommend that the GAS, in addition to investing in sports infrastructure, research and review the variety of sporting initiatives that have encouraged an organic, grassroots interest in sports.

Major economic initiatives are being considered to encourage more capital investment in sports. The Opinions encourage sports companies to raise funds through public listings or bond issuances. Local governments are now required to specify public expenditures on sports in their budget outlines to foster transparency. Preferential tax treatment is also being offered to certain sports companies. For instance, high-tech sports companies’ corporate income tax will be reduced from 25 percent to 15 percent. The government plans to offer funding to start-ups in the fields of sports operation and management, sports creative design and

sports research. Other measures include the government’s commitments to take steps to protect intellectual property regarding the naming of sports organizations, stadiums, games and events. In particular, the government has relaxed the rebroadcasting rights for sporting games and events, meaning each television station may now purchase or resell such rights, excepting only the Olympic Games, Asian Games and FIFA World Cup.

The organization of the recently organized 2017 National Games in Tianjin are further indication of the reality of sports reform in China. According to the China Daily, the 13th National Games played out from 27 August to 8 September embraced a change from “the pursuit of gold medals at the Olympic Games and World Championships to a more balanced attitude toward the fundamental function of sports in society.” One of the major changes involved the inclusion of over 7,600 amateur athletes participating in sports such as tai chi, chess, roller sports, marathon and rock-climbing, in addition to the 10,000 professional athletes. The reform is described as having a two-pronged approach of encouraging more citizens to play sports and more consumers to buy sports-related goods in order to create a “Healthy China.”

### *Other Structural Changes in the Sports Industry*

The organization of sports associations in China is already experiencing some changes. The China Football Association (CFA) is now officially separate from the GAS. Similarly, the China Basketball Association is no longer directly answerable to the GAS. The CFA permitted the first foreign investment into a local club when a Hong Kong holding company owned by Spanish investors showed an interest in a second division CFA team called BIT FC. Trends in e-sports also offer significant precedents for sport management, as evident when the GAS announced official national e-sports competitions, organized the World Cyber Games, managed China’s first national e-sports team, and encouraged video game companies to organize their own gaming competitions and teams.

Other indicators of positive change include the appointment of candidates to league and team management who have both a strong understanding of their sport, as well as international and national credentials in management. Examples include the appointment of Yao Ming as Commissioner of the CBA and that of Lang Ping as coach of the women’s volleyball team. Allowing ownership and management of a local professional soccer club by the former management team of FC Barcelona is another example of favorable changes.

### *Team Ownership*

Additionally, globally-known sports brands are increasingly assisting China stakeholders to promote sports. For instance, Nike is partnering with the Ministry of Education to promote physical education in school. The NBA has also launched NBA Academies constituting elite basketball training centers

育管理体制。（我们应该）进一步深化精英体育管理体制，逐步建立符合全球（规则）和社会主义市场经济要求的管理体系，加强国家运动协会的发展和管理体系，提高国家体育总局的行政效率和能力，及科学管理水平”。

重要的是要注意到，政府在体育管理中的作用仍然很重要，然而很明显人们认识到新的发展轨迹已经开启。

变革的势头不断增长。2014年10月国务院颁布了《关于加快发展体育产业促进体育消费的若干意见》（简称“《意见》”），其中的制度措施反映了体育公共资源不应只用于“国家荣誉”的观点。《意见》最重要的意义是含蓄地承认资源被用于促进精英体育人才，但现在有必要增加更广泛的民众体育运动参与度。

中国美国商会（商会）赞赏国务院将更多资源用于体育推广。商会还建议体育总局除了投资体育基础设施之外，研究和审查各种各样的国际体育活动，这些活动激发了人们对体育运动的健康而广泛的兴趣。

政府也正在考虑采取主要的经济举措，以鼓励更多的资本投资于体育运动。《意见》鼓励体育公司通过公开上市或债券发行募集资金。现在，地方政府必须在预算纲要中规定体育方面的公共支出，以提高透明度。对某些体育公司也提供税收优惠待遇。例如，高科技体育公司的企业所得税将从25%降至15%。政府计划为体育运营和管理、体育创意设计和体育研究领域的初创企业提供资金。其他措施还包括政府承诺采取措施保护与体育组织、体育场馆、比赛和赛事命名相关的知识产权。特别是政府放宽了体育比赛和赛事的转播权，这意味着每个电视台现在可以购买或转售该权力，奥运会、亚运会和世界杯足球赛除外。

最近在天津举办的2017年全运会进一步表明了中国体育改革的事实。据《中国日报》报道，8月27日至9月8日举办的第十三届全运会从“争夺奥运会金牌和世界冠军”变为对体育运动在社会中的基本功能这一更平衡的态度”。主要变化之一是除了10,000名专业运动员之外，还包括超过7,600名参加体育运动的业余选手，如太极拳、象棋、轮滑运动、马拉松和攀岩。这一改革可谓双管齐下，鼓励更多公民参加体育运动，更多消费者购买体育用品，以建设一个“健康中国”。

## 体育产业的其他结构性变化

中国体育协会的组织已经发生了一些变化。中国足球协会（CFA）现在正式与体育总局分离。同样，中国篮球协会（CBA）不再直接由体育总局负责。由于一家由西班牙投资者拥有的香港控股公司对中国足协乙联赛球队“BITFC”感兴趣，中国足协允许外资首次进入一家当地俱乐部。电子竞技的发展趋势也为体育管理提供了重要先例，例如体育总局宣布举办国家电子竞技大赛，组织了世界电子竞技大赛，管理中国首个国家级电子竞技团队，并鼓励游戏厂商组织自己的游戏比赛和团队。

其他积极变化的标志包括任命对体育运动有深刻理解，且持有国际和国家管理证书的候选人为联盟和团队管理人员。例如任命姚明为中国篮球协会委员，任命郎平为女排教练。另一个标志积极变化的例子是，允许巴塞罗那俱乐部前管理团队拥有和管理一家当地职业足球俱乐部。

## 团队所有权

此外，全球知名的体育品牌正在越来越多地协助中国利益相关方推广体育。例如，耐克正与教育部合作促进学校的体育教育。全美篮球协会（NBA）推出了NBA学院，在乌鲁木齐，济南和杭州建立了精英篮球训练中心。全国橄榄球联盟（NFL）也尝试吸引新的中国球迷参加这项在国内并不主流的运动。他们通过媒体宣传为壮大未来的粉丝群奠定了基础，且已经取得了一些成效，例如国内正在组织两项业余赛事，即中国美国橄榄球联盟和城市碗联盟。此外，中国竞技足球联赛也在筹备阶段。2017年8月在天津市全运会场外，职业棒球大联盟签署了扩展合作协议以吸引基层人才和公众参与比赛。此外，美国职业棒球大联盟（MLB）也将协助中国国家队的发

展。随着职业体育联盟和团队的兴起和壮大，以及人们对团队所有权的兴趣日益增加，商会建议将更多资金投向职业体育。商会还建议潜在所有者在被授予拥有团队特权之前，首先达到拥有所有权的适当标准，这包括了管理技能和对所涉体育运动的深入了解。

## 现场直播

观看广播体育是一种流行的消遣方式，被视为一种鼓励更多的人参加体育运动的并对社会有益的方式，也因此体育广播中的产权是一个关键问题。对于ESPN（娱乐体育节目电视网），SkySports（天空体育台）或

in Urumqi, Jinan and Hangzhou. The NFL has also made efforts to attract new Chinese fans to an unfamiliar sport. Through media campaigns, they have laid a foundation for the future development of a fan base. This has already yielded some results, with two domestic amateur competitions being set up, namely the American Football League of China and the City Bowl Alliance. Moreover, the China Arena Football League is also in the planning stages. Further in August of 2017, Major League Baseball at the sidelines of the Tianjin National Games signed an extended partnership agreement to encourage grassroots talent and overall interest in the game by the general public. Additionally, MLB will assist in the development of the national Chinese team.

As professional sports leagues and teams develop, and an increasing interest in team ownership emerges, AmCham China recommends that more funding be directed towards professional sports. AmCham China also recommends that prospective owners first meet a standard of fitness for ownership that includes management skills and strong knowledge of the sport in question, before being granted the privilege to own a team.

### *Live Broadcasting*

Given that viewing broadcast sports is a popular pastime and is recognized as a socially beneficial way to encourage more people to play sports, property rights in sports broadcasting are a key concern. For media companies such as ESPN, Sky Sports or STAR Sports, the capacity to extract a fee for the public viewing of a match is critical to the sustainability of these firms and the sports leagues that they serve. Although the evolution of digital streaming is altering the market, the core business model remains the same. In China, potentially the largest digital and analog market in the world for sports broadcasting, there is still no statutory protection for broadcasting rights.

This gap may not be significant in the current environment, as large media firms can acquire broadcasting rights for international and domestic sports leagues to fill their online channels, without too much concern for losses resulting from unauthorized broadcasts. Such policy is short-sighted, however, because in the absence of copyright protection, small and medium-sized media enterprises looking to produce innovative content or broadcast local sports cannot prove to potential investors that their rights are saleable.

A great deal of attention has been paid to this topic at government and judicial levels. In 2013, the US-China Experts Dialogue made the following proposal in section 4.3 of their report entitled “Live Sports Programming and Non-interactive Streaming”: “The experts unanimously agreed that when the production of live sports programming involves creativity and originality, it shall be protected under China’s current Copyright Law. The experts supported the provisions of the latest available amendment of the Copyright Law which provides a bifurcated approach – the adoption

of “broadcast rights” to give protection to non-interactive streaming media and the right of communication through information networks to protect interactive streaming media. This approach should provide greater flexibility and depth to the protection of the copyright.”

Two recent cases in the Beijing court system, as described by Mark Cohen in the blog China IPR, further highlight the legal complexities. For instance, the Beijing High Court reversed a lower court decision that a sports broadcast by Sina could be protected as a cinematographic work on the basis that the broadcast was not fixed, stable creative, a requirement for such protection. In a related case, CCTV was awarded damages for the misuse of its recorded broadcasts of the 2014 World Cup in Brazil partly because it was an audio visual recording that was stable and fixed in a physical medium. Cohen concludes that the courts were restrained by the law itself to protect the rights of the sports broadcasters and suggests that changes could promote a more effective business model.

Professional athletes and sports fans are already very likely to watch sports on television or through live streaming. In order to promote sports to the whole of society, the sports industry must attract viewers who do not conventionally watch sports. The only way that will happen is if sports broadcasters are incentivized to produce high-quality programs that ensure sports-related narratives are told well. AmCham China recognizes the challenges of creating a new category of protected works in the Copyright Law and the Sports Law. However, in order to provide greater certainty to broadcasters and their investors so they can profit from their investments in broadcasting, we recommend legal and regulatory changes to recognize broadcasting rights for the live transmission of sports events.

## Recommendations

### *For the Chinese Government:*

- **In addition to investing in sports infrastructure, there should be efforts to research and review a variety of international sporting initiatives that have encouraged an organic, grassroots interest in sports. [GAS]**
- Require that prospective owners first meet a standard of fitness for ownership that includes management skills and strong knowledge of the sport in question, before being granted the privilege to own a team.
- In order to provide greater certainty to broadcasters and their investors, and ensure greater market efficiency, recognize broadcasting rights for the transmission of live sports events.

STARSports（卫视体育台）等媒体公司来说，向公众收取观看比赛的费用能力，是对保证这些公司和他们所服务的体育联盟能长久发展至关重要。尽管数字流媒体的发展正在改变市场，但核心业务模式仍然是一样的。中国作为可能是全球最大的体育广播数字和模拟市场，对于转播权仍然没有法律保护。

在当前的环境中，这种法律保护的缺失可能并不明显，因为大型媒体公司可以获得国际和国内体育联盟的广播权，以补充其在线频道，而不用过多地关注未经授权的广播所带来的损失。然而，这种政策是短视的，因为在缺乏版权保护的情况下，寻求制作创新内容或播放本地体育节目的中小媒体企业无法向潜在投资者证明其版权的。

在政府和司法层面对这个话题给予了极大关注。2013年，“中美专家对话”在《现场体育节目和非互动流媒体直播》报告中第4.3节提出了以下建议：“专家一致认为，当现场体育节目制作涉及创意和原创性时，将受到当前中国《版权法》的保护。专家们支持最新《版权法》修正案的规定，该修正案提供了两分法——采用“广播权”来保护非交互媒体，以及采用通过信息网络通信的权利保护交互媒体。这种方法应该为保护版权提供更大的灵活性和深度。”

马克科恩在在中国知识产权博客中提到北京法庭系统的两个案例，进一步凸显了法律的复杂性。例如，北京高等法院推翻了下级法院关于新浪的一则体育广播可以作为电影作品被保护的判决，理由是这种保护要求作品是固定的、稳定的、具有创造性的，而体育广播并不具备上述条件。在一个类似的案例中，中央电视台因其在巴西录制的2014年世界杯足球赛录像被误用而获得赔偿，因为在某种程度上，它是一种稳定的、固定在物理媒介上的视听记录。科恩的结论是，法院受到了法律本身的限制而无法有效地保护体育广播公司的权利，并建议变革可以促进更有效的商业模式。

职业运动员和忠实体育迷们往往通过电视或流媒体直播观看体育比赛。为了真正把体育运动推向社会，体育产业必须吸引那些不经常看体育运动的人。唯一的办法就是，激励体育广播员制作高质量的体育广播，确保体育赛事能被很好地报道。商会承认在版权法和体育法中创建一类新的受保护作品所面临的挑战。然而，为了向广播公司及其投资者提供更大的确定性，确保他们可以从对广播的投资中获利，商会建议进行法律和监管方面的更改，以承认体育赛事直播的广播权。

## 建 议

### 对中国政府：

- 除了投资体育基础设施之外，研究和审查各种各样的激发了人们对体育运动的健康广泛的兴趣的国际体育活动。[体育总局]
- 为更好地促进职业体育的发展，在所有者授权建立团队前，应先达到拥有所有权的适当标准，这包括了管理技能和对所涉体育运动的深入了解。
- 为了给广播公司及其投资者提供更大的确定性，并确保更高的市场效率，应赋予体育赛事直播的广播权。





Part Four:  
Regional Issues  
区域性问题

# Northeast China

## Introduction

**L**iaoning Province, center of AmCham China’s Northeast Chapter, experienced an economic recovery in 2017 after its GDP growth rate had declined continuously since 2010. In 2017 Liaoning’s GDP rose to RMB 2.394 trillion, up 4.2 percent from 2016. Contributing to this positive result were new and advanced technology industries, such as optical cables, solar energy, industrial robots, and new energy vehicles.

Liaoning’s main economic activity is valued added goods manufacturing within traditional industries such as animal husbandry,

fishery, communications, railways, transportation, shipping and aviation. This generated most of the province’s GDP growth in the past. However, these traditional industries have recently seen decreasing market demand and falling sales prices, which contributed to declines in GDP. Overall, the Chinese market requires more technology development and product innovation to stimulate GDP growth. Suitable industries in Liaoning that can foster such growth include high and new technology industries, as well as new products and services.

On March 7, 2017, the General Office of State Council issued a circular entitled “Cooperation Program between Certain Provinces and Cities in Northeast China and Eastern China.” Under the framework, Liaoning and Jiangsu Provinces are matched as cooperation partners, while Dalian and Shenyang are identified as cooperation partners for Shanghai and Beijing, respectively. This cooperation is to take various forms, including sharing of experiences, improvement and reform of the business environment, integration of industrial structure, sharing and development of new technology, capital investment and attraction of human resources. Through this program, many contracts and programs in Liaoning were signed and set up in 2017.

This chapter provides a summary of AmCham China’s Northeast Chapter members’ responses to the 2018 AmCham China Business Climate Survey. Particular attention is paid to both the challenges and opportunities faced by our members in conducting business in Liaoning.

## Top Five Business Challenges in Liaoning Province

在辽宁省经商的五大商业挑战

2017	2018
Labor costs 劳动力成本	Labor costs 劳动力成本
Inconsistent / Unclear laws and regulations 法律法规不一致/不清晰	Shortages of qualified employees 缺乏合格的员工
Inconsistent enforcement of laws & regulations 法律法规执行不一致	Inconsistent / Unclear laws and regulations 法律法规不一致/不清晰
Chinese protectionism 中国保护主义	Shortages of qualified management 缺乏合格的管理
Regulatory compliance risks 合规风险	Inconsistent enforcement of laws 执法不一致

## Business Challenges in Liaoning

Despite the economic recovery experienced by Liaoning in 2017 after a period of declining growth, members of AmCham China’s Northeast Chapter continue to face several challenges, with rising labor costs remaining the greatest concern. Rising salaries and wage expenses were cited as a concern by 61 percent of 2018 AmCham Business Climate Survey respondents, although the figure was down from 68 percent a year earlier. Shortages of qualified employees and inconsistent/unclear laws and regulations were identified as a challenge by 44 percent and 39 percent of respondents, respectively. Shortages of qualified management and inconsistent enforcement of laws are also among the top five challenges to conducting business in Liaoning. Although this

# 中国东北

## 引言

**中** 国美国商会（商会）东北办公室所在地辽宁省 GDP 增长率自 2010 年不断下降的情况下于 2017 年实现经济复苏。2017 年，辽宁 GDP 增长到 2.394 万亿元，比 2016 年增长 4.2%。新兴先进的技术产业，如光缆、太阳能、工业机器人和新能源汽车等推动了 GDP 的增长。

辽宁的主要经济活动是高附加值产品制造业等传统产业，如畜牧业、渔业、通讯、铁路、交通、海运和航空。这些产业过去是 GDP 增长的主要力量。然而，近期这些传统产业的市场需求和销售价格下降，导致了 GDP 降低。总而言之，中国市场需要更多的技术开发和产品创新来刺激 GDP 增长。辽宁省内能够促进增长的产业包括高新技术产业，以及新产品和服务。

2017 年 3 月 7 日，国务院办公厅印发了《东北和东部地区若干省市合作项目》。在此框架下，辽宁和江苏两省互为合作伙伴，大连和沈阳分别被确定为上海和北京的合作伙伴。这一合作将涵盖各种形式，包括分享经验、改善和改革商业环境、整合产业结构、分享和发展新技术、资本投资以及吸引人才等。通过这个项目，辽宁在 2017 年签订了大量合同并完成了立项工作。本章介绍了商会东北办公室会员企业对 2018 年商会《商务环境调查报告》的反馈，尤其关注会员企业在辽宁开展业务所面临的挑战和机遇。

### Top Five Business Challenges of All Chapters Compared to Liaoning Province

相比辽宁省，所有商会办公室成员企业面临的 5 大商业挑战

All Chapters 所有地区办公室	Liaoning Province 辽宁省
Labor costs 劳动力成本	Labor costs 劳动力成本
Inconsistent / Unclear laws and regulations 法律法规不一致/不清晰	Shortages of qualified employees 缺乏合格的员工
Inconsistent enforcement of laws & regulations 法律法规执行不一致	Inconsistent / Unclear laws and regulations 法律法规不一致/不清晰
Regulatory compliance risks 合规风险	Shortages of qualified management 缺乏合格的管理
Increase in Chinese protectionism 中国保护主义	Inconsistent enforcement of laws 执法不一致

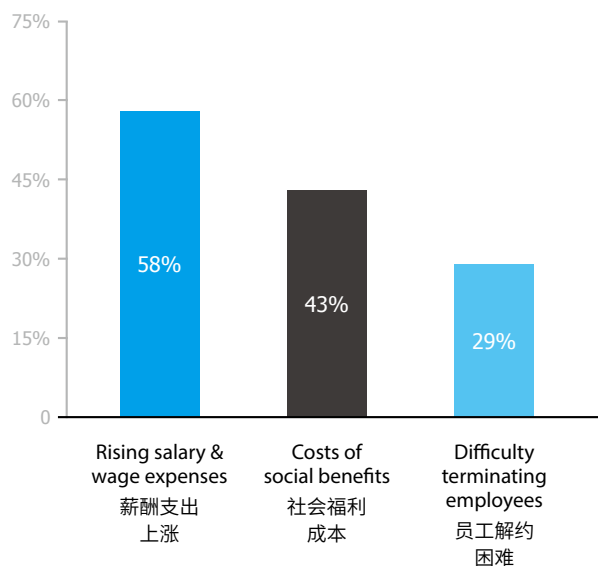
## 辽宁的商业挑战

尽管辽宁经济在经历了增长放缓后于 2017 年复苏，但商会东北办公室会员企业仍然面临着几大挑战，劳动力成本的上升仍然是最令人担忧的问题。在 2018 年商会《商务环境调查报告》的受访者中，有 61% 的人认为薪酬上涨令人担忧，尽管这个数字比一年前的 68% 有所下降。分别有 44% 和 39% 的受访者认为缺乏合格雇员和法律法规执行不一致是一大挑战。这两项位列辽宁经商面临的前五大挑战之一。尽管今年的调查显示，外资企业代表普遍感到不如以前受欢迎，但东北办公室成员在报告中明确表示，比起其他地区办公室分会，他们感到比以前更受欢迎。

尽管 2017 年经济出现复苏迹象，但人力资源仍是一个挑战。受访者认为他们最大的担忧和影响经济前景的因素是薪酬上涨 (58%)，社会福利成本 (43%) 和员工解约困难 (29%)。

## Top Three Human Resources Challenges

### 人力资源三大挑战



year’s survey indicates representatives of foreign businesses generally sense they are less welcome than before, Northeast Chapter members specifically report feeling more welcome than their AmCham China counterparts in other chapters.

Despite indicators of economic recovery during 2017, human resources remain a challenge. Rising salary and wage expenses (58 percent), social benefits costs (43 percent) and difficulty terminating employees (29 percent) were reported by respondents as their greatest concerns and impediments to a positive economic outlook.

## Business Opportunities

AmCham China Northeast Chapter members identified several opportunities for doing business in Liaoning’s tier-two cities. The top business opportunity cited by 43 percent of respondents was growth in domestic consumption, followed by increasing customer demand for foreign brands and quality, cited by 33 percent of respondents. Addressing environmental challenges and environmental protection was described as an opportunity by 26 percent of respondents. Meanwhile, 24 percent equally identified opportunities in expanding business to cover more of China’s domestic market (e.g., by entering new cities and regions), increasing capability for innovation, and preferential foreign direct investment policies.

The steady rise of the middle class in Northeast China continues to fuel a growth in domestic consumption. Such growth in domestic consumption, coupled with increasing customer demand for foreign brands and foreign quality,

creates additional opportunities for foreign companies doing business in China.

Beyond domestic consumption opportunities, members see opportunities in efforts to address environmental challenges and environmental protection. Continuing issues regarding air and water quality in Northeast China and the government’s intent to address such problems offer opportunity for foreign enterprises with expertise in environmental protection and remediation.

Moreover, increasing capabilities in China for innovation was another top business opportunity identified by members in the region. An increasingly innovative and relatively low-cost workforce is seen as an attractive combination by foreign enterprises seeking to operate in China.

The overall positive perception of these opportunities is reflected in Northeast Chapter members’ belief that that the quality of China’s investment environment is the same or improving year-on-year (87 percent), the highest figure among chapters.

## Recommendations

### For the Liaoning Government:

- Continue to hold round-table events with foreign businesses to discuss regulatory and operational challenges, in order to find practical solutions for addressing the most concerning issues outlined in this chapter.
- Provide businesses a channel in the provincial government for resolving inconsistent policies and enforcement.
- As new policies and laws are promulgated, provide foreign businesses guidance on how they are to be implemented in Liaoning.
- Ease the process for foreign employees to apply for work visas and permanent residence status, in accordance with the simplified procedures now utilized in Shanghai.

### For the US Government:

- The US Consulate in Shenyang should continue to reach out to local governments in more collaborative and creative ways, in order to help US business find solutions to the challenges raised in this chapter. Such moves will also simultaneously benefit the broader economy. By acting as a liaison between foreign businesses in Northeast China and the respective government agencies, the US Consulate will make a positive impact on the business environment.

## Top Five Business Opportunities in all Chapters and Liaoning Province

相比辽宁省，所有商会办公室成员企业面临的 5 大商业机遇

All Chapters 所有地区办公室	Liaoning Province 辽宁省
Growth in Domestic Consumption 国内消费增长	Growth in Domestic Consumption 国内消费增长
Expanding business to more of China's domestic markets 扩大业务到中国其他地区	Increasing customer demand for foreign brands / quality 对外国品牌/质量需求的增加
Increasing customer demand for foreign brands / quality 对外国品牌/质量需求的增加	Addressing environmental challenges 应对环境挑战
Digital technologies including e-commerce & Internet 电子技术，包括电商&网络	Increasing capabilities in China for innovation 提高创新能力
Globalization of Chinese companies 中国企业全球化	Preferential foreign direct investment policies 优惠的外国直接投资政策

### 商业机会

商会东北办公室会员企业认为在辽宁的二线城市经商有几大机会。43% 的受访者认为，最大的商机是国内消费的增长，33% 的受访者表示消费者对外国品牌和质量的需求增加，这是第二大商机。26% 的受访者认为应对环境挑战和环境保护也是一个机会。与此同时，24% 的受访者同样发现了扩大业务覆盖更大中国国内市场的机会（例如，进入新的城市和地区）提高创新能力，以及外国直接投资优惠政策。

中国东北地区中产阶级的稳步崛起，继续推动国内消费的增长。国内消费的增长，加上消费者对外国品牌以及质

量需求的增加，为在华经营的外国公司创造了更多的机会。

除了国内消费机会外，会员企业们还看到了应对环境挑战和环境保护中的机会。关于中国东北地区空气和水质等一直存在的问题，以及政府解决这些问题的意图，为拥有相关技术的外国企业在环境保护和修复方面提供了机会。

此外，提高创新能力是该地区会员发现的另一个顶级商业机会。拥有不断创新的能力和相对低成本的劳动力被认为是外国企业寻求在中国经营的一个有吸引力的合成因素。

这些机会的总体意义积极体现在东北分会成员的信念中，即有 87% 的会员认为中国的投资环境质量与上年同期持平或有所改善，这一数字为地区分支办公室最高值。

### 建议

#### 对辽宁省政府：

- 继续与外国企业举行圆桌会议，讨论监管和运营方面的挑战，以便为解决本章节所概述的问题找到切实可行的解决方案。
- 通过省政府为企业提供渠道来解决政策和执行不一致的问题。
- 随着新的政策和法律的颁布，为外国企业提供在辽宁执法的相关指南。
- 依照上海目前采用的简化程序，放宽外籍员工申请工作签证和永久居留身份的流程。

#### 对美国政府：

- 美国驻沈阳领事馆应继续与当地政府进行更有合作性和创造性的沟通，帮助美国企业找到本报告所提到的各种挑战的解决方案。这些举措还将同时惠及整体经济。美国领事馆作为东北地区外国企业与各政府机构之间的联络人，将对商业环境产生积极影响。

# Shanghai

*This chapter was contributed by The American Chamber of Commerce in Shanghai (AmCham Shanghai).*

## Introduction

Shanghai prides itself on being the nation's model of economic openness and aspires to be a global city. Its outward orientation, diversified economic base, and business-friendly government constitute key strengths that make Shanghai attractive to foreign direct investment (FDI) in a wide range of sectors.

Shanghai's GDP grew at a rate of 6.9 percent (total RMB 3.01 trillion) year-on-year in 2017, compared to 6.8 percent annual GDP growth in 2016. In 2017, contractual and paid-in foreign capital amounted to US \$40.194 billion and US \$17.008 billion, respectively. Foreign-invested firms contributed significantly to Shanghai's economy, accounting for 2/3 of the city's total export-import volume, 1/3 of the tax revenue, and 1/5 of the city's jobs. A large pool of foreign talent and innovative products and ideas are also important by-products of Shanghai's ability to attract FDI. These contribute significantly to the local economy.

Shanghai is renowned for its highly developed services sector relative to other Chinese cities, and serves as China's financial and logistics center. In the first three quarters of 2017, the services sector accounted for 69 percent of municipal GDP. In addition, the city also has a strong manufacturing sector that promotes innovation and high-value-added sectors, such as artificial intelligence, medical devices, and new materials. The city is a major center for automobile and aircraft manufacturing and also enjoys a growing consumer base, improving healthcare, and efficient transportation.

In line with the city's ambitious development goals, the Shanghai government undertook multiple reforms in 2017 aimed at increasing market liberalization. It continued to introduce reforms in the China (Shanghai) Pilot Free Trade Zone (Shanghai PFTZ), such as updating the negative list to encourage greater FDI within the zone. Progress was also made towards establishing Shanghai as a headquarters hub, as well as an international R&D center. As of 2017, Shanghai was home to 625 regional headquarters and 426 R&D centers. US companies in Shanghai, like US companies elsewhere in China, are nevertheless constrained by a number of national policies. Although there have been marginal improvements for foreign firms in select industries, significant challenges to market access remain in many sectors. These barriers come in

the form of explicit barriers, such as equity caps and licensing restrictions, as well as implicit barriers, including window guidance and tendering policies. There is also growing concern among Shanghai-based data-intensive and intellectual property-sensitive businesses in industries such as high-tech manufacturing, financial services, and cloud computing regarding the threat presented by China's "Cybersecurity Law" and protectionist stance to their China operations.

## Ongoing Regulatory Issues

### *China (Shanghai) Pilot Free Trade Zone*

Launched in September 2013, the Shanghai PFTZ has served as a testing ground for economic reforms. As of late 2016, there were over 15,810 foreign investments registered in the Shanghai PFTZ, with 6,248 new foreign investments registering in 2016 alone. Moreover, the Shanghai PFTZ accounted for 25 percent of Shanghai's GDP, despite only covering two percent of the city's surface area.

The updated "Free Trade Zone Negative List" announced in June 2017, which effectively replaced the 2015 list, also applies to the Shanghai PFTZ. It reduces the number of categories and special management measures that prohibit FDI in specific industries. Since the introduction of the negative list in 2013, the number of restrictive measures for FDI has been reduced by nearly half. The new list also lowers thresholds for FDI in the manufacturing and services sectors, and reduces restrictions on foreign capital M&A. However, the reductions have had only limited impact on market access for companies, as many of the reductions were the result of combining categories or eliminating redundancies on the list.

In 2017, Shanghai's Party Secretary announced plans to establish a Shanghai Free Trade Port within the Shanghai PFTZ. The port is intended to help liberalize the Shanghai PFTZ by adhering to international standards for regulation on trade. It is also expected to play an important role in offshore trading, particularly for the shipping and logistics involved in China's Belt and Road Initiative. In October 2017, a draft plan was submitted to the central government for approval, but was not officially released in 2017. Companies that are set up within the Shanghai Free Trade Port zone are also expected to enjoy corporate tax reductions.

# 上海

本章由上海美国商会撰写。

## 引言

上海以中国经济开放的前沿城市自居目标成为国际都市。上海拥有外向型经济、经济基础多样、市政府支持商业发展的主要优势，吸引了多领域外商的直接投资（FDI）。

2017年，上海国民生产总值（GDP）同比增长了6.9%（3.01万亿元人民币），而2016年全年GDP增长了6.8%。2017年，合同和实收外国资本分别为401.94亿美元和170.08亿美元。外商投资企业上海经济贡献显著，占上海进出口总额的2/3，税收收入的1/3，创造就业岗位占1/5。外商直接投资间接为上海带来了许多外国人才、创新产品和创意，为当地的经济作出了巨大贡献。

相对于中国其他城市，上海因高度发达的服务业而闻名，同时也是中国的金融和物流中心。在2017年前三季度，服务业占上海GDP的69%。此外，上海的制造业十分强劲，大力发展人工智能、医疗服务和新材料等极具创新能力和高附加值的行业。上海也是汽车制造和飞机制造的中心城市，交通四通八达，消费者数量不断增长，医疗卫生服务不断提升。

2017年，为实现成为国际都市这一宏伟目标，上海市政府进行了多项改革进一步推进市场自由化。中国（上海）自由贸易试验区继续推行改革，如更新负面清单，为自贸区吸引了更多的外商直接投资。上海在发展总部中心和成为国际研发中心方面也有新进展。截至2017年，已经有625个地区总部和426个研发中心落户上海。然而，上海的美国公司和中国其他城市的美国公司一样，受到了一系列中国政策的制约。尽管一些行业的外国公司受制约情况有少许改善，但很多行业仍面临巨大的市场准入挑战，既有股权上限、许可限制等显性障碍，也有窗口指导、招标政策等隐性障碍。在上海设立的从事高科技制造业、金融服务业和云计算行业的数据密集型及知识产权敏感型企业

也越发担心公司经营会受到中国《网络安全法》和行业保护主义政策的影响。

## 现存监管问题

### 中国（上海）自由贸易试验区

上海自贸区于2013年9月启动，在过去四年可谓是中国经济改革的试验田。截至2016年底，上海市自贸区的外商投资企业已超过15810家，仅2016年就新增了6248家。尽管土地表面面积只有上海的2%，自贸区已为上海市贡献了25%的GDP。

经过修订的《自由贸易试验区外商投资准入特别管理措施（负面清单）》于2017年6月生效，取代了2015年的版本，也适用于上海自贸区。该负面清单减少了特定行业外商投资准入的类别和特别管理措施。中国自2013年推出负面清单以来，限制外商直接投资的措施数量减少了一半。新的负面清单也降低了外商直接投资在制造业和服务业方面的门槛，减少了对外资并购的限制。但是这些减少的措施对外资进入中国市场帮助不大，因为很多删减仅是合并门类或避免重复。

2017年，上海市委书记宣布了设立上海自由贸易港的计划。港口旨在遵守国际贸易管制标准的前提下进一步放开上海自贸区。港口也有望在离岸贸易中发挥重要作用，特别是支持中国“一带一路”倡议中航运和物流的发展。2017年10月，该方案已提交中央政府审核，但在2017年结束前还未正式获准。在上海自贸区内设立的企业也有望享受减免企业所得税的优惠政策。

### 签证修订

自2017年4月1日起，在华外籍专家签证新政策在全国范围内正式生效。新政策由国家外国专家局（SAFEA）制定，旨在简化外国专家申请签证的程序及材料。2016年



## Visa Revisions

China's new visa policy for foreign experts working in China took full, nationwide effect on April 1, 2017. The new policy, implemented by the State Administration of Foreign Experts Affairs (SAFEA), intends to streamline the application procedure and simplify requirements for foreign experts. Shanghai served as one of the pilot cities for the new policy beginning in October 2016.

As of late 2017, AmCham Shanghai members nevertheless still reported challenges in obtaining visas for foreign workers under the new visa policy. Ambiguity surrounding required documentation, slow processing times, and perceived arbitrary rejections have delayed the hiring process for new workers. Foreign workers who apply for work visas while based in China also face the additional hurdle of trying to obtain documents from their home countries, which under the current regulations frequently require document authentication and in-person visits to the individual's former academic institution and local police bureau. These delays have already proven costly for companies, who are forced to wait while new hires go through the visa application process. Companies have also found it difficult to navigate communication channels between visa service agents and SAFEA.

## Recent Developments

### Foreign Investment Promotion

In 2017, the State Council released two important documents, Circular 5 and Circular 39, for promoting foreign investment growth. Local governments followed suit by releasing their own implementation plans shortly afterwards. In April, Shanghai released its own "33 Points" outlining measures to promote foreign investment across five main areas as follows: reducing restrictions on foreign investment consistent with the national negative list; developing financial incentives for investments in strategic industries such as advanced manufacturing; improving the investment environment within the Shanghai PFTZ; strengthening the city's ability to attract foreign talent; and improving the overall environment for foreign investment with respect to the legal framework, IPR protection, and R&D development, among others. The "33 Points" are consistent with Shanghai's long-term efforts with respect to market liberalization and adaptation of the central government's foreign investment policies to the Shanghai market. However, they do not include detailed information on implementation of the measures.

### International Financial Center

In 2009, the State Council announced the goal of making Shanghai an international financial center by 2020. Since the announcement, the Shanghai government has introduced numerous measures to support an international financial

center in the city, but with limited success. The share of foreign bank assets in China's total banking assets continues to drop. According to CBRC statistics, the share fell from a paltry 2.38 percent in 2007 to an even lower 1.29 percent in 2016. The slow pace of reform, the introduction of capital controls, prevalence of window guidance, and barriers to market access continue to undermine Shanghai's efforts in this area.

Despite these problems, Shanghai has continued to introduce reforms in the financial sector. The Pudong Government published the "13th Five-Year Plan for the Lujiazui Finance and Trade Zone" in June 2017. Specifically, the plan identifies financial services, shipping, and modern commerce as being the three primary industries for the zone's development during the 13th Five-Year Plan period (2016-2020). For financial services, the plan prioritizes attracting domestic and foreign financial institutions to establish regional headquarters and branches in Shanghai, and encouraging innovative banking, securities, and insurance products, so long as they comply with local regulations.

The central government's tightening of internet control through censorship of online content and restrictions on the use of virtual private networks (VPNs) also threatens Shanghai's aspirations to become a global financial center, despite the city's relative internationalism and the presence of many foreign companies. In 2017, multiple VPN applications were removed from China's online app stores, and word spread that the government would begin heavily restricting VPN services in 2018. Restricting access to VPN services would degrade Shanghai's attractiveness as an investment destination. It would also discourage global talent to relocate to the city, reducing the flow of human capital that could help develop Shanghai's creative and innovative capabilities. It would have a particularly strong impact on small- and medium-sized companies, as many of them depend on IT platforms that can only be accessed via a VPN for their business communications, and as such they would be forced to rely on expensive international, privately leased circuits. It would also limit the ability of many China-based offices to connect with overseas counterparts, and could hamper Shanghai's economic development.

### R&D Center

In line with the technology and innovation targets laid out in the central government's 13th Five-Year Plan (2016-2020), Shanghai has its own goals to become a global technology and innovation center. In October 2017, the Shanghai government released the "Supporting Guidance for Foreign R&D Centers" to encourage foreign-funded R&D centers' participation in Shanghai's broader R&D promotion plan. The guidelines focus on improving the cross-border flow of innovation resources, enhancing IPR protection and enforcement, attracting high-level foreign talent, and improving the environment for services and investment. Noteworthy items in the guidelines also include optimizing patent policy, introducing financing options for qualified R&D projects, simpli-

10月份该政策已开始试点，上海就是试点城市之一。

然而2017年末，美国商会在上海的会员企业反映，新签证政策下，外籍员工申请签证仍面临重重障碍。签证所需文件含糊不清，处理时间缓慢，拒签理由随意，都耽误了企业招聘新员工的程序。在中国申请工签的外籍员工面临又一重障碍，即从国籍所在地获得的文件通常需要公证，还会有专人亲自到该员工曾属的学术机构和当地警局核实信息。新招聘了外籍员工的公司不得不等待签证发放，而这种等待其实对公司而言成本十分昂贵。公司也发现很难在签证服务机构和中国国家外国专家局之间找到沟通的渠道。

## 最新进展

### 促进外资增长

2017年，国务院发布了两个重要文件：针对促进外资增长的国发（2017）5号和国发（2017）39号。各地政府随即发布了相关落实计划。4月，上海市发布了共有33条的《关于进一步扩大开放加快构建开放型经济新体制的若干意见》（以下简称“33条意见”），旨在从五个主要领域促进外商投资：根据国家负面清单减少外商投资限制措施；制定财政激励措施，鼓励在先进制造业等战略性新兴产业领域的外商投资；改善自贸区投资环境，增强上海吸引外资的能力；增强上海吸引外国人才的能力；为外商投资改善上海的法律框架、知识产权保护和研发等环境。“33条意见”符合上海进一步开放市场的长期目标，也是将中央政府的外资政策落到实处的举措，但是却没有体现这些措施具体怎样实施。

### 国际金融中心

2009年，国务院宣布至2020年上海将成为国际金融中心。此后，上海市政府出台了一系列定位国际金融中心的举措，但成效不大。外资银行资产占中国银行业总资产的份额持续下降。据中国银监会统计，这一比例从2007年的2.38%，下降到2016年的1.29%。改革步伐缓慢，资本管制普遍实施，窗口指导盛行，市场准入壁垒重重，不断削弱着上海在成为国际金融中心方面的努力。

尽管如此，上海仍在金融领域推行改革。2017年6月，浦东新区人民政府发布了陆家嘴金融贸易区“十三五”规划，其中特别提到金融服务、航运和现代商贸是“十三五”期间（2016-2020年）区域发展的三大核心产业。金融服

务方面，该规划优先考虑吸引国内外金融机构在上海建立地区总部和分支机构，并鼓励机构推出符合当地法规的创新型银行、证券和保险产品。

上海国际化程度高，外企众多，而中央政府通过审查网络内容和限制使用虚拟专用网（VPN）来加强互联网控制的做法，也影响了其成为全球金融中心的愿景。2017年，多个VPN应用程序从中国线上应用商店下架，有传政府将从2018年起严格限制VPN服务。限制访问VPN服务会降低上海作为投资目的地的吸引力，也会影响国际人才来到上海的意愿，阻碍具备创意和创新能力的人力资本流入上海。同时，中小型企业会遭受强烈冲击，因为许多公司依靠IT平台开展业务，而这些平台只能通过VPN访问。这也会限制许多企业的中国办事处与海外的联系渠道，阻碍上海的经济发展。

### 研发中心

根据中央“十三五”规划（2016-2020）的技术创新目标，上海也设立了打造全球技术创新中心的宏伟目标。2017年10月，市政府出台了《上海市关于进一步支持外资研发中心参与上海具有全球影响力的科技创新中心建设的若干意见》（以下简称《科创中心建设意见》），进一步支持外资研发中心参与科创中心建设。《科创中心建设意见》重点促进创新要素全球配置和跨境流动、聚焦知识产权保护和落地、吸引外国高端人才以及提升服务和引资环境。值得一提的措施还包括优化专利政策，为合格的研发项目提供融资选择，简化外籍员工的工签流程，并简化实验产品和样品的进口流程。

上海市政府尚未颁布《科创中心建设意见》的实施办法。如果意见得以实施，许多外国公司将增加研发投入。然而，出于对知识产权保护、本土企业的激烈竞争及关键行业缺乏市场准入的担忧，一些企业重新考虑了其研发足迹。此外，由于成本削减和战略转移等原因，一些外国公司决定在2017年关闭上海研发中心。

### 总部经济

自2011年起，上海市政府开始想法设法吸引跨国公司在本地设立地区总部，如亚太地区或大中华区总部。对外资企业的激励措施包括减税、返还办公场所租金、为企业高管简化出入境手续、协助当地外籍员工取得居留许可，同时采取贸易便利化措施改善通关流程。2017年4月，上

fyng the foreign work visa policy for relevant personnel, and streamlining the process for import of experimental products and samples.

The Shanghai government has not yet issued the implementing regulations to carry out the guidelines. If these are implemented, it could help many foreign companies to expand their R&D. However, concerns about IPR protection, strong competition from local companies, and the lack of market access in key sectors have made some companies reconsider their R&D footprint. Moreover, a number of foreign companies decided to close their Shanghai R&D centers in 2017 due to reasons such as cost-cutting and strategic relocation.

### *Headquarters Economy*

Since 2011, the Shanghai government has sought to attract multinational companies (MNCs) to establish regional headquarters in Shanghai such as Asia-Pacific or Greater China headquarters. Incentives for foreign firms include tax reductions, capital refunds for office space rentals, simplified exit/entry procedures for company executives, assistance for local employees in obtaining Shanghai residence permits, and trade facilitation measures to improve the customs clearance process. In April 2017, the Shanghai government issued updated guidelines to further improve the business environment for foreign firms.

In 2017, 45 MNCs established new regional headquarters in Shanghai. From 2011-2017, MNCs had established 625 regional headquarters and 426 R&D centers in Shanghai. Shanghai is home to the most MNC regional headquarters in mainland China. Most of these headquarters are in Pudong and have found themselves in the Shanghai PFTZ following expansion of the area covered by the zone. More than 400 of the 625 headquarters are manufacturing companies.

### *Trade Facilitation*

On July 1, 2017, the General Administration of Customs (GAC) officially launched the nationwide customs clearance integration program, which first began as a pilot program in Shanghai in June 2016. Under the program, GAC established a National Customs Risk Prevention Center, responsible for conducting safety and security risk analysis of goods, and a Unified Tax Collection Center, responsible for post-clearance tax collection and follow-up supervision. The program was implemented nationwide with the establishment of two additional Risk Prevention Centers in Qingdao and Huangpu, as well as two further Tax Collection Centers in Guangzhou and Beijing/Tianjin.

In 2017, Shanghai China Inspections and Quarantine Services (CIQ) made significant improvements in the E-CIQ system, a centralized single-window platform allowing companies to apply for licenses and permits, and to complete Shanghai CIQ-related declarations via an

online interface. It also allows for the sharing of information between Shanghai CIQ port offices. These improvements have led to increased efficiency and have resulted in faster processing times for companies.

### *Environmental Reforms*

The national “Environmental Protection Tax Law” took effect in January 2018. Under the new law, companies will no longer submit pollution fees to the Ministry of Environmental Protection (MEP). Instead, they will now be required to file an environmental tax form with the Tax Bureau. Environmental taxes will be self-declared by companies. This change places more responsibility on companies. In addition, emission permit status and violation information will be made public via the MEP’s online system, with the goal of increasing transparency and accountability.

The Shanghai government showed its commitment to environmental protection by releasing its local “Management Guidelines for Pollution Emission Permits” in March 2017. These guidelines are more stringent than those set by the national government for total emissions allowances and emissions reductions by individual companies. Shanghai’s guidelines also include targets for solid waste and noise pollution reductions.

## Recommendations

### *For the Shanghai Government:*

- Issue detailed regulations to carry out the “Supporting Guidance for Foreign R&D Centers” that provides support for foreign R&D in Shanghai.
- Provide more clarity on policies regarding VPNs and ensure that foreign companies continue to have access to affordable VPN services for business purposes.
- Implement the Shanghai government’s plan to improve foreign investment, as laid out in its “33 Points” document, and look for ways for Shanghai to pilot market access openings that could then be extended to the rest of China.

海市政府出台了新的指导意见，进一步改善了外资企业的营商环境。

2017年，45家跨国公司在上海设立了新的地区总部。2011至2017年，跨国公司在上海共设立625个地区总部，和426个研发中心。在中国大陆，上海拥有最多的跨国公司地区总部，且大多数位于浦东。随着上海自贸区覆盖面积的扩大，这些总部也被纳入了自贸区。625个总部中有400多家是制造公司。

### 贸易便利化

2017年7月1日，中国海关总署（GAC）正式推进全国海关通关一体化改革，而上海早在2016年6月就已开始通关一体化改革试点。试点期间，海关总署成立了风险防控中心和税收征管中心，分别负责对货物进行安全风险分析和清关后的税收及后续监督工作。在全国推行“海关通关一体化”期间，海关总署在青岛和黄埔增设了两个风险防控中心，并在广州和京津增设两个税收征管中心。

2017年，上海检验检疫局在建设中国电子检验检疫系统（e-CIQ）方面成效显著。电子检验检疫系统是集中的“单一窗口”式平台，允许企业通过线上操作申请执照和许可证，完成上海检验检疫相关申报。系统也支持上海口岸服务办公室之间信息共享，既能提升效率，又为公司缩短了办理时间。

### 环境改革

中国自2018年1月起施行《中华人民共和国环境保护税法》。新法规定，企业不再需要缴纳排污费至环境保护部，而是要向国家税务总局缴纳环境保护税。环境保护税将由公司自行申报。这意味着公司将负有更多责任。此外，排污许可证情况和违规信息将通过环境保护部系统进行线上公布，以提高透明度和问责性。

2017年3月，为落实环保，上海市政府发布了《上海市排污许可证管理实施细则》（以下简称《实施细则》）。针对个别公司，《实施细则》中对排放总量和减排量的规定比中央政府还严格。《实施细则》还规定了固体废物污染和噪音污染的减排目标。

## 建议

### 对上海市政府：

- 制订《科创中心建设意见》的实施细则，为上海的外资研发中心提供支持。
- 阐明虚拟专用网相关政策，确保外国公司可以继续获得用于商业目的、经济实惠的虚拟专用网服务。
- 落实“33条意见”，以改善外商投资环境。寻找上海试点市场准入机会的途径，然后再扩展到中国其他地区。

# Southwest China

*This chapter was contributed by the American Chamber of Commerce in Southwest China (AmCham Southwest).*

## Introduction

**S**outhwest China has emerged as one of the nation's most prosperous economic regions. Both Chengdu and Chongqing have benefited from increased foreign investment and the central government's efforts to allocate resources for the region's development. This is in part due to their strategic positioning along the Belt and Road Initiative, which aims to connect China with greater Eurasia. As Chengdu and Chongqing continue to experience annual GDP growth rates well above the national average, AmCham Southwest member companies are confident that they will continue to perform well economically.

Chengdu is the economic powerhouse of Southwest China. With more than 281 Fortune 500 companies, Sichuan's capital aims to become a global city and a leader in the high-tech industry. The city's newly developed high-tech industrial zone, the Chengdu Tianfu Software Park, has attracted technology companies to this rapidly developing metropolis. As part of its ambitious infrastructure plans, Chengdu recently opened its sixth metro line which now connects the city's three main railway stations to the existing transportation network. The newly opened Xi'an-Chengdu High-speed Railway has cut travel time between Chengdu and Xi'an from 11 hours to four hours. Moreover, with the Tianfu International Airport scheduled to open in 2020, Chengdu will join Beijing and Shanghai as one of three cities to have two international airports.

Southwest China's other major economic engine, Chongqing, is one of only four municipalities directly controlled by the central government. Chongqing's GDP grew by 10.7 percent in 2016, which was the fastest growth rate of any provincial-level administrative region that year. The municipality benefits from the Yangtze River Economic Zone and the China-Singapore (Chongqing) Demonstration Initiative on Strategic Connectivity. Chongqing will continue to benefit from its rapidly developing infrastructure, with an expansive metro network and improved high-speed rail connections to other cities in China. AmCham Southwest members are confident that Chongqing will also continue to have good economic performance.

Despite Southwest China's optimistic outlook, both Chengdu and Chongqing face challenges due in part to

their rapid growth and development. As industries continue to expand, companies are unable to meet the demand for qualified talent and must look either to outsourcing work to employees in cities such as Shenzhen, Shanghai, and Beijing, or hiring foreign talent. Additionally, foreign companies have growing concerns over the transparency and efficiency of the regional legal system, as well as the enforcement of new policies that affect foreign business. As foreign investment and international exposure increase, it becomes more important for Chengdu and Chongqing to have trusted legal systems and pragmatic policies for business to thrive.

## Ongoing Regulatory Issues

### *Financial Industry Issues*

Chengdu continued to grow economically in 2017. The greater Chengdu economic region's overall industrial output increased by more than eight percent in 2017, with Deyang leading the way with a 10.4 percent increase. Industrial growth facilitated additional growth in the financial services sector, which has increased demand for international funding. For example, regional financial leasing companies grew following the expansion of the automotive industry in Chongqing led by global car manufacturers. Foreign companies that raise funds abroad to finance their operations need more guidance on how the central bank will maintain financial market stability. However, the region's long-term growth prospects encourage companies to finance growth through debt. For instance, despite a short-term downturn in car sales, car manufacturers are still willing to borrow because of optimistic long-term business prospects.

### *Financial Reforms for Increasing International Capital Access*

Financial reform is a long-standing issue in China for which there continues to be support from members in the region. In addition to foreign companies who, by their nature, need international funding, local financial companies also want to utilize international funding for their local clients. As a result, both foreign and local financial services companies support stabilization of the value of the yuan and for the capital markets to become more open to foreign direct investment (FDI).

# 中国西南

本章由中国西南美国商会撰写。

## 引言

**中** 国西南地区已成为中国经济最繁荣的区域之一。成都和重庆都受益于外国投资的增长，及中央政府为区域发展分配资源的举措，如连接中国与欧亚大陆的“一带一路”倡议中的城市战略定位。随着成都和重庆的年 GDP 增长率持续高于全国平均水平，商会会员公司相信他们将继续在经济上表现良好。

成都是中国西南地区的经济重城。拥有超过 281 家财富 500 强企业，四川的资本目标是成为全球城市和高科技产业的领导者。新开发的成都天府软件园高新技术产业园吸引了科技公司来到这个快速发展的大都市。成都的基础设施计划雄心勃勃，最近开通了第 6 条地铁线，将该市的三个主要火车站连接到现有的交通网络。同时也推出了新的高铁服务，将成都至西安的时间从 16 小时缩短至 4 小时。此外，成都计划于 2020 年建成的新天府国际机场，将意味着成都将与北京、上海一道成为拥有两个国际机场的三大城市之一。这些措施使得成都的交通更加方便。

重庆市是中国四大直辖市之一。随着重庆成为长江经济带、中新（重庆）战略性互联互通示范项目、“一带一路”等重要倡议的战略节点，中国西南美国商会的会员企业相信重庆将继续保持良好的经济发展。2016 年，重庆 GDP 增长率达到 10.7%，位列全部省级行政区中第一。重庆将继续受益于快速发展的基础设施，同时也雄心勃勃地希望通过实现这些目标来推动地区经济增长。

尽管中国西南地区前景乐观，但成都和重庆都面临着增长和发展的挑战。随着产业继续扩张，企业无法满足对合格人才的需求，必须考虑将工作外包给深圳、上海和北京等城市的员工，或聘用外籍人才。此外，外国公司对区域法律体系的透明度和效率越来越担忧。随着外国投资和国际影响力的增加，成都和重庆拥有商业运营可信赖的法律体系变得更加重要。

## 现存监管问题

### 金融行业问题

2017 年，成都经济继续增长。除眉山外，该地区的工业总产值同比增长了 8% 以上。工业增长促进了金融服务业的相应增长，金融服务业需求增加获得了国际资金的机会。例如，在重庆，金融租赁公司在全球汽车制造商主导的汽车行业扩张之后增长。外国公司正在中国境外筹措资金，为其在华业务提供资金。在中国境外筹措资金以支持其在外业务的外国公司急需更多关于中央银行会如何保持金融市场稳定的指导。该地区的长期增长前景鼓励企业通过举债为增长融资。比如，尽管汽车销售业绩遭遇短期的低迷，制造商依然因为对未来保持乐观而继续借款。

### 增加国际资本进入的金融改革

金融改革是中国长期存在的一个问题，在这个问题上，该地区的成员一直在支持。除了外国公司，当地的金融公司也在寻求为当地客户提供国际资金。因此，外国和本地金融服务公司都支持稳定的人民币币值，并支持资本市场对外国直接投资 (FDI) 更加开放。

### 金融体系更加透明

金融服务供应商面临全球金融市场和本地业务增长的巨大波动。金融体系应该提供保护来应对这种不确定性，包括提供可靠的信用评级系统来评估企业的稳健程度和破产以及随后复苏的可能性。然而，尽管最近有所改善，但中国的体制不够透明，无法满足这些需要。在成都，许多公司仍然报告受到虚假的信用评级。

正如上面所提到的，金融行业在招募合格人才方面面临困难，很难招聘到金融专家是一个关键问题。与其他行业一样，金融业的合格专家大多居住在深圳、上海或北京等大城市。一个有能力的金融专家不仅要掌握扎实的金融知识，对行业和管理水平有透彻的了解，还应该符

## *Greater Transparency in the Financial System*

Financial service providers are exposed to substantial volatility from the global financial market and local business growth. The financial system should provide protection against uncertainty through a reliable credit rating system that evaluates the soundness of businesses and likelihood of bankruptcy. Likewise, the process of recovery from bankruptcy should be more transparent. Despite recent financial reforms, the Chinese system is not yet sufficiently transparent. This is illustrated by the fact that firms in Chengdu still report receiving inaccurate credit ratings.

## Recent Developments

### *Infrastructure Demand*

As in many places across China, the rapid economic growth in the Southwest region has increased the demand for infrastructure. Currently, the regional infrastructure falls short of business needs. This is especially the case in high-tech and traditional manufacturing industries where waste disposal, internet reliability, and transportation have become major bottlenecks, hindering growth and causing other problems.

### *Waste Disposal Facilities*

The accumulation of hazardous waste inside factories severely affects the daily operations of many companies in the manufacturing industry. The processing of hazardous by-products in factories and manufacturing plants is currently regulated by the government. However the capacity of regional waste-processing facilities has failed to keep up with the growing volume of waste. A lengthy government approval process for new hazardous waste disposal plants has delayed the opening of new plants. Such delays force factories to store hazardous waste on-site while they await disposal, which creates a potentially hazardous environment.

To address these problems, the local government should formulate plans to hasten the development of hazardous waste disposal plants. This can be achieved by simplifying the approval process for building these plants and allowing more of them to be built.

### *Internet Reliability*

The ability to maintain steady and secure channels of communication with international clients and offices is essential for daily operations and time-sensitive work. Such connectivity is crucial to the economic development of many businesses, especially in the high-tech industry. While the government has created internet free zones, such as Tianfu Xinqu in Chengdu, businesses still rely heavily on the use of Virtual Private Networks (VPNs). However, the government frequently and arbitrarily restricts the use of VPNs and

fails to provide advance notice of when and how long these restrictions will be in place.

Issuing clear guidelines as to when, and under what circumstances, restrictions will be placed on VPN connections will alleviate operational pressure and communication hindrances. Furthermore, advance notice would also allow companies to plan around the downtimes. Such protocols are essential of Chengdu's high-tech industry is to gain ground in the global market for internet services. While international private leased circuits are a means to get around these restrictions, using such alternatives is costly and not viable for all businesses.

## *Judicial Transparency and Efficiency*

AmCham Southwest has rising concerns about the region's court system in its handling of foreign-related disputes. As Chengdu and Chongqing enjoy increasing foreign investment and international exposure, a reliable legal system has become essential for sustainable economic growth. This refers not only to the manner in which decisions are made, but also to judicial efficiency when enforcing orders and decisions.

Recently, concerns about inconsistent court rulings have grown, especially in cases involving bankruptcy and foreign investments. Objective decision-making and consistent rulings are paramount for building trust. Greater trust will decrease uncertainty of foreign investors and enhance foreign investment. Strengthening trust between foreign entities and the Chinese court system will alleviate concerns over transparency and benefit the local economy overall. Furthermore, as Chengdu and Chongqing gain more international exposure, there will inevitably be an increasing volume of foreign-related cases that need to be dealt with efficiently for businesses to operate.

Additionally, the judicial infrastructure is currently unable to cope with the rising number and increasing complexity of foreign-related cases due to the shortage of regular professional staff, unfamiliarity with services required for international litigation, inefficiency in basic services, and poor communication between various governmental departments and related parties. A more streamlined networking protocol between departments and an upgraded electronic filing system would increase efficiency. Moreover, a system of permanent judges and a professional long-term workforce would also increase the courts' familiarity with international cases and litigation.

## *Hiring and Retaining Talent*

Businesses in Southwest China face a shortage of local and foreign talent due to growing demand, market competition, and a general lack of skilled local workers.

合全球金融行业的专业标准，同时也要了解当地的商业文化。由于人才匮乏，金融公司选择从其他地区招聘专家，比如台湾，或雇佣员工远程办公。

## 最新进展

### 基础设施需求

与中国许多地方一样，西南地区的快速经济增长也增加了对基础设施的需求，导致目前基础设施无法满足企业的需求。在高科技和传统制造业中尤其如此，垃圾处理、互联网可靠性和交通运输已经成为阻碍增长和其他问题的主要瓶颈。

### 垃圾处理设施

工厂内有害垃圾的积累严重影响了许多制造业企业的日常运营。在工厂和制造厂中处理有害废料的副产品目前受到政府的管制。然而，当地制造业的快速增长已经造成垃圾量超出区域处理能力。此外，新的危险废物处理工厂的审批程序也造成更多工厂开工推迟。这样的延迟迫使工厂在等待处置时将危险废物储存在现场，造成了潜在的危险环境。

为了解决这些问题，地方政府制定了加快建立危险废物处理工厂的计划。这是可以通过简化建造工厂的审批程序，或者允许更多的工厂建设来实现。

### 网络可靠性

虽然中国政府已经创建了互联网自由区，比如成都的天府新区，但很多企业，包括高科技产业的企业，都大量依赖虚拟专用网 (VPN) 来连接外国办事处和客户。然而，政府经常在不通知企业的情况下任意地限制使用 VPN，并且没有提前告知将在何时、多长时间内实施限制。

由于高科技产业是一个非常具有时效性的领域，因此有能力与国际客户保持稳定的互联网联系对于该行业的经济发展至关重要。要改进这一情况，可以发布明确的指导方针，告知在何时、何种情况下将对 VPN 连接进行限制，这将有助于公司对停工做出计划安排。此外，获批公司也应豁免于这些限制。如果发展中的高科技产业要在全球互联网服务市场中占据一席之地，这种改进是至关重要的。

### 法院的透明度和效率

在处理涉外纠纷方面，商会对该地区法院体系的担忧日益加剧。随着成都和重庆越来越多地受到外国投资的青睐及其国际知名度的提高，可靠的法律体系对商业经营变得更加重要。这里所指的不仅仅是作出决定的方式，还指法院执行命令和决定的效率。

最近关于法院裁决不一致的担忧有所上升，尤其是涉及破产和外国投资的案件。客观的决策和一致的裁决对于建立信任是至关重要的，更多的自由投资会因此开展，投资者也会减少犹豫。中美两国政府在这一领域的合作潜力巨大，双方都有可能从中获益。加强外国实体与中国法院系统之间的信任，将缓解对透明度的担忧，并鼓励更多外国投资进入当地经济。

司法基础设施目前无法应对不断增加、复杂的涉外案件。随着成都和重庆的国际化程度越来越高，将不可避免地会增加一些需要有效处理的涉外案件。当前问题包括缺乏正规的专业人员，不熟悉国际诉讼所需的服务，基本服务效率低下，以及部门和相关方之间沟通不畅。精简化部门间网络协议，升级电子文件归档系统将提高效率。此外，常设法官制度和专业的长期劳动力也会增加法院对国际案件和诉讼的熟悉程度。

### 招聘、留住人才

在中国西南地区，由于需求增长，市场竞争加剧，以及普遍缺乏熟练工人，中国西南地区的企业面临着本地和国外人才的短缺。

### 金融业人才稀缺

中国西南地区的金融业面临着一个招聘本地人才尤其是金融业资深人士的困境。像其他行业一样，金融业的资深人士普遍在大城市像深圳、上海、或者北京工作。他们的教育资历、工作经验和管理能力均能达到国际标准。另外他们对中国西南地区当地的工作文化和环境也有所了解。然而因为西南地区能达到如此标准的人才稀缺，金融类企业选择了在像台湾等地去招纳贤士或者聘请能远程工作的员工。

### 酒店业人才迅速增长

酒店业将继续蓬勃发展。随着成都 2010 年开通第二个机场，预计将增加 1000 个酒店客房，这将急剧增加对合格员工尤其是初级职位的需求。由于初级职位对人才的质量



### Financial Industry Talent

The financial industry in Southwest China faces difficulty recruiting local qualified talent, with limited access to financial experts being a critical issue. As in other industries, qualified experts in finance reside mostly in major cities such as Shenzhen, Shanghai, or Beijing. Financial experts should have the education, experience, and management skill level to meet global standards for professionalism and communication. Additionally, they should have an understanding of the local business culture in Southwest China. Yet, due to the scarcity of such talent, financial companies have opted to recruit experts from other areas, such as Taiwan, or hire employees to work remotely from other cities.

### Hospitality Industry Talent

The hospitality industry in Chengdu has grown at a rapid rate and will continue to grow. With the scheduled opening of Tianfu International Airport in 2020, an estimated 1,000 hotel rooms are expected to be added, increasing the demand for talent. Junior positions require a level of talent consistent with international industry standards, but finding such talent is difficult and expensive. AmCham Southwest recommends that the Chengdu and Chongqing governments implement vocational training programs or make it easier to hire foreign talent for junior positions.

### Visa Policies for Foreigners

The current visa policy makes it difficult for companies to find and retain foreign talent. For example, English language schools are limited to hiring nationals from an approved list of countries. Even when candidates are qualified native English speakers, they may be barred simply because they are not from an approved country. For example, people from countries such as Sweden and Norway often speak English as fluently as native speakers, but are no longer able to teach English. This has caused some schools to lose qualified teachers or struggle to hire personnel who can satisfy the requirements for these positions. While AmCham Southwest understands the underlying rationale for this policy, it may have an unnecessarily negative impact. Allowing schools more flexibility in hiring applicants from countries with a high English fluency rate would alleviate the pressure schools experience in finding suitable teachers.

### Oversupply in Hospitality

The hospitality industry in Southwest China has experienced significant growth in the last few years, with the number of high-end luxury hotels creating strong market competition. The price of a luxury hotel room in Chengdu, for example, is significantly below the price in other cities due to competition. A growing concern in the industry is the impact of alternative hospitality services, such as Airbnb. AmCham Southwest recommends that the Chengdu and Chongqing

governments monitor the impact that such services will have on the hospitality industry.

## Recommendations

### *For the Sichuan and Chongqing Governments:*

- **Enhance transparency in financial services, including a reliable credit rating system.**
- Formulate measures to simplify the approval process for hazardous waste disposal plants to support the expansion of manufacturing while preventing environmental and other safety risks.
- Set up clear guidelines on restrictions to VPN connections to help companies maintain stable connections with foreign offices and clients and support healthy economic development.
- Regarding bankruptcy and foreign investments, advance a reliable and efficient judicial infrastructure and system with a streamlined networking protocol, an electronic filing system and long-term professional workforce.
- Promote the hiring of talent in the financial and hospitality industries to meet the increasing demand for qualified employees in these strong markets.
- Expand the list of nationalities eligible for foreign educational professional posts, subject to the applicants meeting other recruitment requirements.

有较高要求，这也意味着寻找相关人才的难度和成本增大。商会建议成都和重庆政府采取措施吸引人才到西南地区。

### **外国人才的签证政策**

目前的签证政策使得在华企业公司很难找到并留住外国人才。例如，现行的签证政策使得在华的语言教学机构只能从一份政府提供的清单中雇佣符合条件的相关国籍人士。即使某些人才是符合招聘要求而且英语也是他们的母语，他们可能依然面临拒绝因为他们的国籍并不在这份许可清单上。例如，来自瑞典和挪威等国的人士说着母语一样流利的英语，但是他们不被允许在华教授英语。这使得一些教学机构失去了潜在的好人才或者面临着招聘不到合适员工的困境。虽然商会能够理解目前的签证政策背后的制定初衷，但是商会仍认为该政策会产生可避免的负面效果。倘若能允许教学机构更灵活地聘用英语流利程度较高国家的人才，教学机构在寻找合适教师所面临的压力将会有所减轻。

### **酒店业供应过剩**

近年来，中国西南地区的酒店业经历了长足的发展，高端豪华酒店的数量在不断增加并产生了高度的市场竞争。因此，成都一间豪华酒店客房的价格明显低于其他城市。同时，行业中越来越多的人关注非主流酒店服务的影响，如爱彼迎（Airbnb）。商会建议成都和重庆政府持续监测这些服务对酒店业的影响。

- 扩大适合外国教育专业岗位的国籍名单，考虑满足其他招聘要求的申请人员。
- 推动招聘金融和酒店业人才，以满足这些发展强劲行业对合格员工日益增长的需求。

## **建议**

### **对四川和重庆政府：**

- 提高金融服务的透明度，包括可靠的信用评级体系。
- 制定措施，简化危险废物处理工厂的审批流程，以支持扩大生产，同时防止环境和其他安全风险。
- 在VPN连接的限制上设置明确的指导，帮助公司与外国办事处和客户保持稳定的联系，促进经济健康发展。
- 在破产和外国投资方面，通过精简网络协议、电子文件归档系统和长期的专业人员，推进完善可靠而高效的司法基础设施和系统。

# Tianjin

## Introduction

**T**ianjin is one of China’s leading commercial centers, in line with its historical position as a leading seaport. Not only is it the fourth largest city in the country, it lies at a critical intersection for major economic development initiatives in China, including the Belt and Road Initiative, Free Trade Zone development, and Jing-Jin-Ji integration.

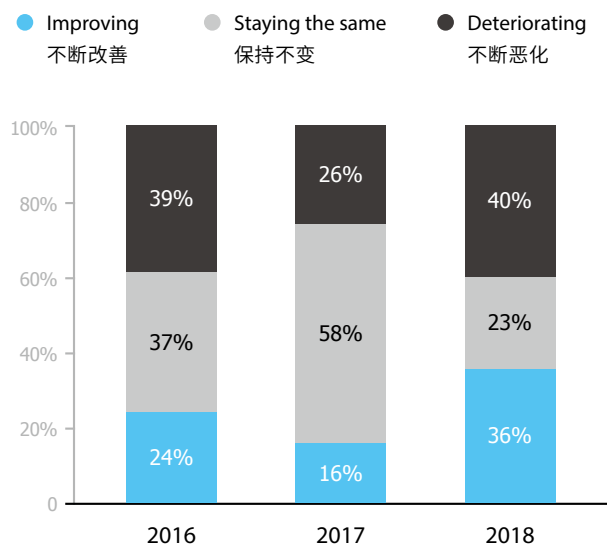
Tianjin, as is the case for most of China, is at an economic turning point. For the third consecutive year, the service sector GDP exceeds 50 percent and continues to grow. While the industrial sector remains significant, the service sector increasingly drives the development and the needs of our members. Challenges in recruiting and retaining key talent must be addressed, in order to keep pace with the growth in services and maintain Tianjin’s status as a viable investment option.

Tianjin, a major seaport and early pilot FTZ city, continues to serve as a major international gateway for northern China. However, members are now more focused on the domestic economy and its potential for growth. The top three business opportunities that members have cited are related to domestic growth and serving the expanding middle class in China.

Our members’ financial results for 2017 exceeded those in 2016. This has led to more optimism about the overall quality of the investment environment in Tianjin. However, lingering headwinds continue to depress planned investment below past levels. Tianjin unfortunately is steadily losing its relative competitive edge for members. Many cite labor costs, a lack of transparency in policy (including regulatory enforcement) and a shortage of talent as top business challenges.

The data in this chapter, unless otherwise specified, is based on responses from our Tianjin members in the 2018 AmCham China Business Climate Survey, which was conducted in late 2017.

## Quality of China’s Investment Environment 中国的投资环境质量



## Tianjin’s Business and Operating Climate

This year 40 percent of respondents stated the investment environment is improving, an increase of 14 percent compared to last year. Financial results also improved with only 2 percent of companies declaring an operating loss. However, 66 percent of responding members stated they feel less welcome than in previous years. Such mixed responses can be attributed to several factors as discussed below.

### Investment Environment

Members are planning a larger percentage increase in investment this year than in previous years. Of those surveyed, 62 percent state they will increase investment in 2018, with 32 percent targeting investment increases of 11 percent or more. This is a 23 percent increase from 2017. Members cite improving revenue growth rates, compliance initiatives, and cyclical asset replacement and improvement as investment drivers. Meanwhile, 34 percent of members state they will not increase investment in 2018, which is similar to the figure from 2017.

# 天津

## 引言

**天**津作为中国著名的商业中心之一，从古至今都是重要的港口城市。除了是中国的第四大城市，天津对于中国重大经济发展措施的实施来说也非常重要，包括“一带一路”倡议、自贸区的发展以及京津冀协同发展计划。

和中国大部分城市一样，天津正处于经济转折点。天津服务业的GDP连续三年增长超过50%，并保持持续增长。工业发展仍保持重要地位，服务行业则进一步推动了中国美国商会（商会）会员企业的发展和需求。招聘和关键人才保留问题是天津务必解决的一大挑战，以跟上其服务业的发展的步伐，从而保持天津的重要投资地位。

作为重要的港口和早期自贸区试点城市，天津一直以来都是中国北方地区的重要国际门户。然而，会员企业在更加注重国内经济增长和发展潜力。最被会员看重的三大商机都与国内发展和服务中国不断增长的中产阶级相关。

商会会员企业2017年的财务状况比2016年表现更佳，因而人们对整体的投资环境也更为乐观。但是，一些持续存在的问题仍对投资计划造成阻碍。很遗憾，天津正逐渐失去其对会员企业的相对竞争优势。许多企业指出劳动力成本的增加、包括监管执行在内的政策透明度的缺失，以及人才短缺是其最大的商业挑战。本章所提及的数据，除另外说明，皆基于天津的会员企业在2018年发布的《商务环境调查报告》（于2017年底开展）中的反馈。

## 天津的商务和经营环境

在今年的调研中，40%的企业表示投资环境有所改善，相比去年增长了14%。财务状况有所加强，仅2%的企业表示其经营亏损。但是，66%的企业表示其比往年更不受欢迎。以上的不同反馈可以归因于以下几大因素。

## 投资环境

相比往年，会员企业今年的投资计划有所增长。在所有数据提供者中，62%的企业表示其将在2018年增加投资，32%企业计划增加至少11%的投资，这个数子比2017年增长了23%。会员企业指出收益的增长、合规措施、周期性资产置换和提升都是增加投资的推动因素。同时，34%的企业表示其在2018年不会增加投资，这个数据与2017年基本相同。

## 企业经营表现

76%的会员企业表示盈利，另外21%表示收支平衡，相比2016年略有提升。更重要的是，这表示2017年经营亏损的企业有所减少。重工业和其他某些行业仍面临挑战，但是整体行业发展都有显著提升。

## 近期进展和挑战

无论是正面还是负面，宏观趋势多年来都保持相同情况。中产阶级的发展和相应的国内消费都是最被看好的增长领域。然而，人力资源和监管问题是会员企业面临的首要商业挑战。

## 增长前景

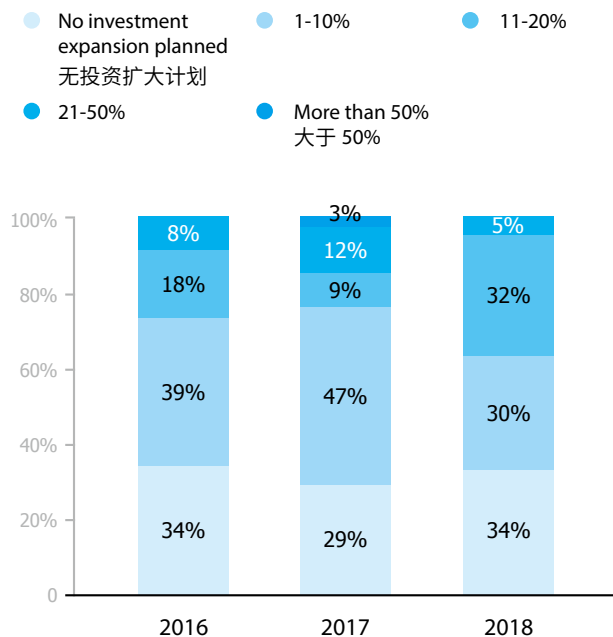
47%的会员企业表示国内消费增长是中国最重要的商业机会。此外，45%的会员企业指出国外品牌需求增长（包括电子商务）是三大增长机会之一。大约34%的企业希望通过扩大业务范围来覆盖更多国内城市。显然，尽管存在持续挑战，成员企业仍十分注重拓展国内市场。

此外，30%成员企业表示中国在应对环境问题上所做出的努力给他们带来了商机。会员企业将继续探索参与到其中的机会，以此来改善天津的生活质量。

雄安新区的兴起似乎为天津的发展带来了挑战。在天

## Estimated Investment Increase for China Operations

### 计划在华增加投资情况



## Business Results

Profitable operations were reported by 76 percent of members, with an additional 21 percent indicating break-even results, which is a slight improvement from 2016. More importantly, however, fewer companies reported losses in 2017. Challenges remain for heavy industries and certain other sectors but there is notable improvement across all industries.

## Recent Developments and Challenges

The macro trends, both negative and positive, continue with similar year-on-year results in many areas. The development of the middle class, and corresponding domestic consumption, is among most favorable area for growth. However, human resources and regulatory issues rank highest in terms of the business challenges members face.

## Growth Prospects

Among our respondents, 47 percent say growth in domestic consumption is the top business opportunity in China. In addition, 45 percent cite the increasing demand for foreign brands, including e-commerce, as a top three growth opportunity. Some 34 percent of respondents wish to expand their business to cover more domestic cities. It is thus apparent

that members have a strong focus on expansion in the domestic market despite ongoing challenges.

Moreover, 30 percent of members responded that efforts to address environmental challenges in China offer business opportunities. Members continue to look for opportunities to be part of the solutions to improve the quality of life in Tianjin.

The creation of the new “Xiong’an” area appears to be a significant impediment to Tianjin’s development. Surplus commercial space has already been built and is ready to use in both central Tianjin and the Binhai New Area, the new area is unnecessary. There should instead be a focus on the efficient use of the resources already present in the region.

Major economic development initiatives, such as the Belt and Road Initiative, the Free Trade Zone development, and Jing-Jin-Ji integration, are especially relevant to Tianjin. However, they have not yet yielded significant business opportunities for members. Members need a more cohesive and focused approach from the government that can lead to stronger participation and improved benefits.

## Human Capital Challenges

In our survey 70 percent of respondents described rising labor costs as their top business challenge, which is a significant rise from the 55 percent recorded in 2017. Furthermore, in responses to the question on HR challenges, members indicated wage-related problems are their primary concerns. Some 60 percent cited rising wage expenses and 56 percent social benefits costs as their top HR challenge. Such sustained increases in labor costs have a negative impact on business results, and also hold back further investment in the city.

In addition to labor costs, 32 percent of respondents cited a shortage of qualified management talent as their top business challenge, while 30 percent cited a lack of qualified labor. A lack of flexibility in overall labor management has led to a shortage of suitable labor talent. As Tianjin has gained greater prominence in China’s economy, the problem is worsening. Additional efforts in private-public partnerships are needed to address these challenges.

## Ongoing Regulatory Issues

Four of the top five responses to members’ “top business challenges” were related to regulatory transparency and enforcement. Inconsistent enforcement (40 percent of respondents), and inconsistent regulations (38 percent of respondents) lead to unintended results for members, such as regulatory compliance risk (38 percent of respondents) and unfair taxes (32 percent of respondents).

Anecdotally, our members have expressed concerns that the enforcement of environmental policies is not being applied methodically. This has resulted in the shutdown of factories that comply with environmental standards, as well as those

津中部和滨海新区已建成且过剩的商业区域正准备投入使用，因此雄安新区的发展并非必要。反之，应该将重点放在对该区域现有资源的有效利用上。

“一带一路”、自贸区发展和京津冀协同发展等重大经济发展举措与天津尤为相关。然而，这些重大举措尚未给会员企业带来明显商机。会员企业需要更具凝聚力和更明确的方法来确保更积极的参与和取得更好的收益。

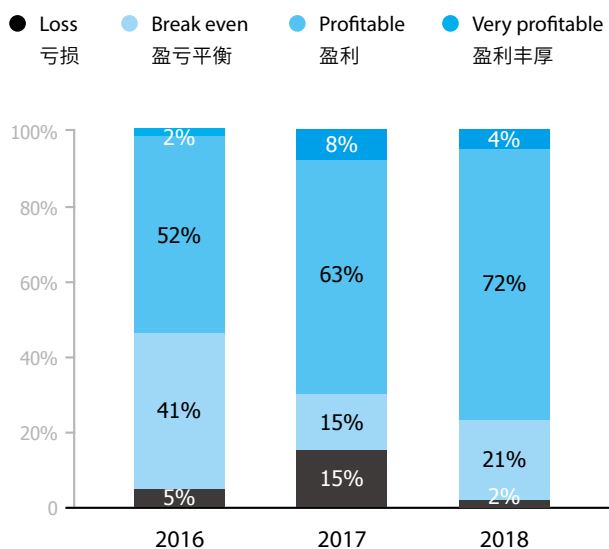
## 人力资本挑战

调研中，70%的受访者认为劳动力成本的上升是其面临的首要商业挑战，比2017年的55%有显著增长。此外，关于人力资源挑战，成员企业指出工资相关问题是其主要关注点。60%左右受访者指出的工资支出增加，以及56%受访者指出的社会福利支出是最大的人力资源挑战。劳动力成本的持续增长为企业的经营效益带来负面影响，也阻碍了其对该城市的进一步投资。

此外关于人力成本，32%的受访者指出合格的管理人才的短缺是其首要挑战，而30%受访者表示合格员工的短缺是其面临的最大的商业挑战。缺乏灵活的劳动力管理导致了持续的人才短缺。由于天津在中国经济发展中处于重要地位，这些问题就显得更为突出。为了应对这些挑战，公私合作伙伴关系更需加强。

## Financial Performance of Tianjin-Based Companies

### 天津会员企业的财务表现



## 持续的监管问题

会员反馈的五大商业挑战中的四项都与监管透明度和执行力相关。执行不一致(40%受访者)和法规不一致(38%受访者)导致不公平待遇，例如合规风险(38%受访者)和不公正税收(32%受访者)。

有趣的是，商会会员企业表示出了他们对于环保政策实施的合理性的担心，因为由此导致符合或违反环保标准的工厂都要被关闭。同样，减少废弃物的新措施已经宣布，但是具体政策和实施尚待明确。因此，会员企业对于这些措施将如何实施都表示担忧。

商会鼓励通过“依法治国”和更积极的行动来确保合规性。但是，如果政策举措的意识没有显著提高，会员们无法管理其客户或其他利益相关者的日常需求。

## 建议

### 对于天津政府：

- 确保合适的政策，包括其在执行上对所有企业都一视同仁。加强关于新措施的公共教育工作，比如近期为改善空气质量以及其他环境问题所做的工作。
- 提高政策和执行的透明度不仅可以帮助会员企业更好地制定规划，还可以带来有益于整个城市的持续创新，取得最佳效果。
- 创新和技术对会员企业的商业策略至关重要，并可以帮助改善关系到该城市整体人口的其他问题。自贸区发展、京津冀协同发展和“一带一路”倡议等项目受到商会的大力推崇；要发挥这些项目的最大潜力，必须解决当前的障碍，从而才能为天津吸引到最优秀的本地和国外人才。
- 通过专业公关机构和与外国商会协作，继续坚定的提高天津对外国投资者的吸引力，以应对经济增长放缓和市场普遍存在的不稳定等因素的挑战。
- 制定一份清晰的路线图，确定天津在京津冀区域一体化战略中的作用，包括确定和支持服务业等天津具有或者能够获得竞争优势的产业在该地区发展的战略计划。

that violate them. Likewise, new initiatives to reduce waste have been announced, but specific policies and their enforcement remain vague. As a result, members have expressed concerns about how these will be implemented.

AmCham China applauds the efforts to uphold the “rule of law” and take more aggressive actions to ensure compliance. However, without significant improvement in policy initiative awareness and planning, members cannot manage the daily demands of customers or other stakeholders.

## Recommendations

### *For the Tianjin Government:*

- **Ensure appropriate policies, including their enforcement, are applied equally to all companies. Direct more efforts toward public education related to new enforcement initiatives, such as recent efforts to improve air quality and other environmental issues.**
- Transparency, in regulations and enforcement, will not only help members to plan efficiently, but will also bring sustained innovation and best practices that can benefit the entire city.
- As innovation and technology are pivotal to members’ business strategies and can help improve other issues affecting the city’s entire population, platforms such as the FTZ, Beijing-Tianjin-Hebei, and Belt and Road initiative are welcomed by AmCham China; to maximize the potential of these projects, current barriers must be removed in order to attract the best local and foreign talent to Tianjin.
- Continue to market Tianjin more assertively to foreign investors through the use of a professional PR agency and by coordinating with foreign business chambers, in order to help address current challenges, including the slowdown of economic growth and general market instability.
- Provide a clear roadmap for Tianjin’s role in the regional integration strategy with Beijing and Hebei province, including a strategic plan to identify and promote those sectors in which Tianjin has or is able to gain competitive advantages in the wider region, such as service industries.





# Wuhan

## Introduction

**A**mCham China’s Central China Chapter members continue to be positive about the business environment in the region. In our survey 77 percent say the quality of China’s investment environment has remained the same or improved, up two percent from last year, and 79 percent are planning to increase investment in their China operations. However, 71 percent report they feel less welcome than before. Central China Chapter members have identified several areas for significant business opportunities, including ongoing economic and social reforms, the possibility of leveraging China for other markets, increasing innovation capabilities in China, and the country’s Belt and Road Initiative policy and investments. The Wuhan government welcomes investment in the following areas: industrial projects; petroleum and petrochemical materials; the service sector; and agriculture. The living and working environment in Wuhan continues to improve. Wuhan airport opened a third terminal in 2017,

and the Wuhan government continues efforts to reduce pollution. Regarding public transport, a new subway line was opened, an existing line was extended, and the first phase of another new line was completed.

AmCham China welcomes further government efforts to attract and retain leadership talent, increase transparency of laws and regulations, upgrade health care, improve traffic, and develop international-standard banking services. We also welcome greater efforts by the US government to provide more clarity and transparency for Chinese investors seeking to target the US.

## Ongoing Regulatory Issues and Recent Developments

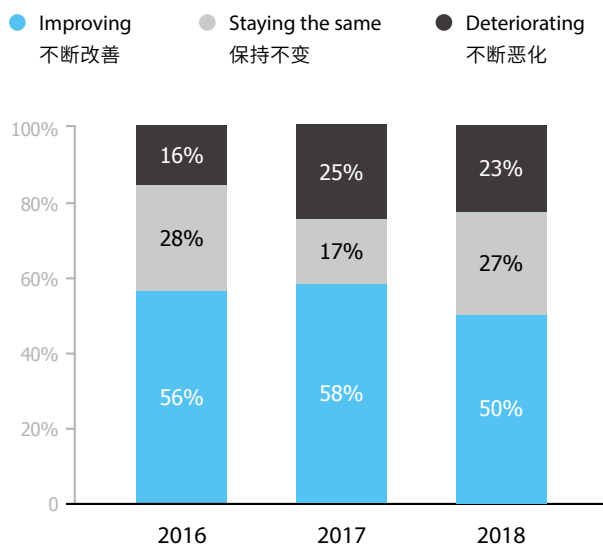
### *Attracting & Retaining Mid- to High-Level Talent (Wuhan Municipal Government)*

AmCham China applauds the efforts of local and provincial governments to attract talented personnel to Hubei. The recent policies on residency permits have led to a high level of talented young people choosing to stay in Wuhan. Current policies that have focused on attracting global top-level technical experts and leaders have also helped to improve the quality of Wuhan’s workforce. However, recruiting top and mid-level talent remains a significant challenge for companies in Central China. A shortage of qualified employees, as well as of qualified management, are two of the top five business challenges reported by AmCham members. If Wuhan wishes to enhance, or maintain, its position as one of the top tier “high-tech” cities in China, it must draw talented senior managers and team leaders, whether foreign or Chinese. Currently, many employees at this level are middle-aged and settled with their families in cities such as Beijing, Shanghai or Shenzhen. Such individuals are unlikely to relocate to Wuhan where they would face housing, education, healthcare, and many other lifestyle challenges.

AmCham China recommends that the Hubei and Wuhan governments adopt innovative policies to attract, retain, and reward mid- and high-level senior managers and team leaders in high-tech companies. They are also advised to organize platforms for universities and companies to work together more effectively in improving talent development,

## Quality of China’s Investment Environment

### 中国的投资环境质量



# 武汉

## 引言

中国美国商会（商会）华中地区会员仍然看好华中地区的总体商务环境。根据调查，77%的会员企业认为中国的投资环境保持不变或有所改善，比上一年度增加了2%，79%的人计划增加中国业务的投资。然而，71%的企业表示，他们感到越来越不受欢迎。商会华中地区会员认为一些领域有重要商机，包括正在进行的经济和社会改革，利用中国发展其他市场的可能性，增加中国的创新能力，以及国家的“一带一路”倡议和投资。武汉市政府欢迎以下领域的投资：工业项目、石油石化原料、服务行业和农业。武汉的生活和工作环境不断改善。例如，武汉天河国际机场于2017年开通第三航站楼，以及武汉政府继续努力控制污染。公共交通方面，政府开通了

一条新的地铁线，延长了一条既有线路，另一条新线路的一期工程也已经完成。

商会欢迎政府为进一步采取措施吸引和留住管理人才，提高法律法规的透明度、提高医疗水平、改善交通、发展符合国际标准的银行服务。商会还欢迎美国政府为寻求瞄准美国市场的中国投资者提供更加明确和透明的服务。

## 现存监管问题及最新进展

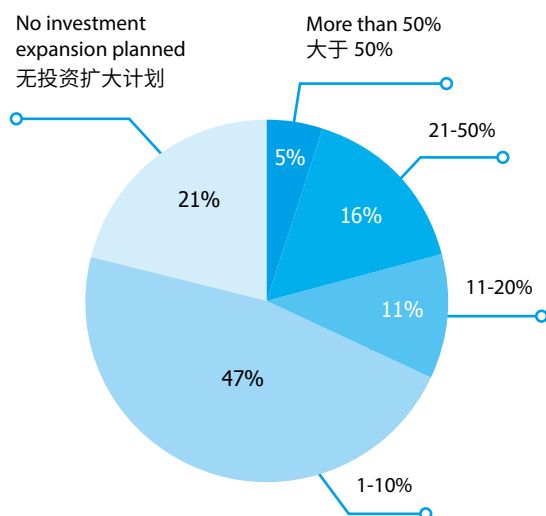
### 吸引和留住中高层人才（武汉市政府）

商会对省政府及各地方政府在吸引人才来鄂工作方面所作出的努力表示赞赏。最近出台的户籍政策使得很多有才华的年轻人选择留在武汉。目前的政策聚焦于吸引全球顶级技术专家和管理人才，这也有助于提高武汉劳动力的质量。然而，在华中地区，招聘高层和中级人才仍然是一个重大挑战。缺乏合格的员工和管理人员，占据商会成员报告中五大商业挑战中的两个挑战。如果武汉想要提升或保持其作为中国一线“高科技”城市之一的地位，就必须吸引优秀的国内外高级管理人员和团队领导者。目前，很多符合以上要求的人才都是北京、上海、深圳等城市成家的中年人，因为武汉面临住房、教育、医疗和许多其他生活方式的问题，这些人不太可能迁移到武汉工作。

商会建议湖北省和武汉市政府采取创新政策来吸引、留住和奖励高科技公司的中高层管理人员和团队领导者。商会还建议为高校和企业搭建一个合作平台，改变现有分散孤立的做法，更有效地促进人才培养。与在武汉注册的全球产业龙头企业合作，将是培养高层次人才、满足市场需求的有效途径。武汉市政府还应落实政策，加强推动中央政府确定的允许高校教师在企业工作的政策力度。在关键的增长领域，越来越多的有才能的高级管理人员和团队领导者将推进中国未来数年的发展。

## Estimated Investment Increase for China Operations

### 计划在华增加投资情况



as current efforts to cooperate are sporadic and fragmentary. Partnering with global industry leader companies registered in Wuhan would be an effective way to educate top level talents to serve market demand. The Wuhan government should also implement policies to reinforce and enhance the central government’s policy of allowing university instructors to work in companies. An ever-growing pool of talented senior managers and team leaders in key growth areas will support Central China’s development in years to come.

**Greater Transparency of Laws and Regulations (Wuhan Municipal Government)**

AmCham China recognizes the efforts made by the Wuhan government to adopt policies and regulations to maintain a positive business environment. Nevertheless, Central China members cite compliance risk among their top business challenges. Foreigners can access news articles about new policies, but have very limited channels for obtaining the formal policy documents in English in a timely manner.

AmCham China recommends that the Hubei and Wuhan governments prioritize prompt publication of new policies and regulations in English on their official websites (much of the information on the Wuhan government website has not been updated since 2012) and invite foreign companies, in addition to local enterprises, to provide feedback in the drafting of relevant policies and regulations. More government processes can be done online (“一次办、马上办、网上办”), and AmCham China recommends that the Wuhan government expand website services allowing foreigners to complete suitable government processes online.

**Addressing Traffic Challenges (Wuhan Traffic Management Bureau)**

AmCham China applauds the significant investments that the Hubei and Wuhan governments have made in recent years to improve traffic conditions, including building a new airport terminal, adding international air routes, integrating international cargo transportation via train and waterway, and constructing additional expressways, subways, and Bus Rapid Transit routes. However, AmCham members continue to regard traffic congestion among the chief quality of life issues. The number of vehicles is increasing faster than traffic management can cope.

AmCham China recommends that the Hubei and Wuhan governments develop a comprehensive traffic management strategy that includes building more parking structures and enforcing laws against parking on pedestrian walkways. We also recommend that real estate developers be required to account for traffic flow in their development of apartment complexes.

**Banking Services (Hubei Banking Regulatory Commission)**

AmCham members welcome China’s increased openness in the financial services sector. Nevertheless, enterprises have limited banking options. There are almost no foreign banks operating in Central China, and those operating have restrictions on the services they are able to offer. Credit facilities are strongly lacking, particularly for small to medium sized foreign-invested enterprises operating in Central China. Smaller enterprises are often forced to use personal credit cards when corporate credit cards would be more convenient and appropriate. AmCham recommends relaxing market barriers to allow foreign banks more access to increase competition and stimulate improvements in service quality.

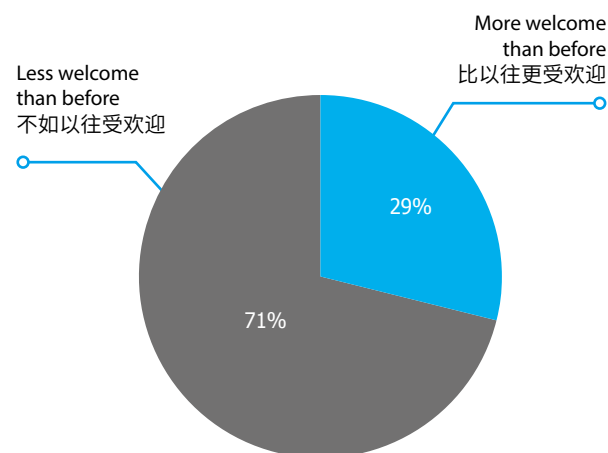
**Health Care Sector (Wuhan Municipal Health and Family Planning Commission)**

The healthcare system in Wuhan continues to improve in terms of facilities, advanced technology and training. Many hospitals have opened VIP departments where staff speak some English and help foreigners navigate the Chinese medical system. A couple of international healthcare organizations operate in conjunction with the hospital system in Wuhan. However, the access to high-quality healthcare is limited by a lack of well-trained generalists to treat common medical issues and coordinate care across disciplines. As a result, patients must navigate an increasingly complex system on their own, and many rarely see the same physician twice, increasing the likelihood that medical issues will be overlooked.

AmCham recommends that the Hubei and Wuhan governments adopt policies to encourage the training of primary care physicians, which is in accordance with central govern-

**Do you feel foreign businesses are more or less welcome in China than before?**

您认为外资企业在中国的受欢迎程度与以往相比有何变化?



## 加大法律法规透明度（武汉市政府）

商会认可中国政府在颁布和实施新法律法规后保持良好商业环境方面所取得的进步。尽管如此，华中地区商会成员仍将合规风险列为他们开展商业经营所面临的挑战之一。外国人可以看到有关新政策的相关新闻文章，但能及时获得英文版本的正式政策文件渠道有限。

商会建议湖北省和武汉市政府能够重视在其官网上及时公布英文版本的新政策和法规（武汉政府网站上大部分的信息自2012年以来都没有更新），并在邀请本地企业时也邀请外国公司就相关政策和法规的起草提供反馈意见。政府流程可以增加在线办理的事项（“一次办、马上办、网上办”）。商会建议武汉政府扩大网站在线服务内容，便于外国人线上办事。

## 解决交通问题（武汉交通管理局）

商会对近年来湖北省和武汉市政府为改善交通状况所做的重大投资表示赞赏，包括建设机场新航站楼、增加国际航线、国际铁路和水运货物交通线路、新建高速公路、地铁和快速公交路线。但是，交通拥堵仍然是商会会员企业面临的一个重要的影响生活质量的问题。车辆数量增长的速度远远超过交通管理基础设施增长的速度。

商会建议，湖北省和武汉市政府制定一份全面的交通管理战略，包括建设更多的停车设施，治理人行道上停车现象等。我们还建议房地产开发商的房屋建设规划中考虑到交通流的空间要求。

## 银行服务（湖北银行业监督管理委员会）

商会会员企业欢迎中国进一步开放金融服务领域。但是，企业可以选择的银行有限。几乎没有外资银行在华中开展经营，而那些开展经营的外资银行所提供的服务也非常有限。特别是对于在华中地区的中小型外资企业而言，信贷便利奇缺成为显著问题。较小的企业通常只能使用员工的个人信用卡，但实际工作中使用企业信用卡会更加方便适用。商会建议进一步开放银行业市场，放宽外资银行的市场准入，从而推动服务质量的提升。

## 卫生医疗领域（武汉市卫计委）

武汉的医疗保健系统在设施、先进技术和培训方面不断完善。许多医院开设了贵宾区，员工会说一些英语，能帮助外国人熟悉中国医疗系统。也有一些国际医疗组织与

武汉的医院系统协力合作。然而，由于缺乏训练有素的全科医生来治疗常见的医疗问题以及进行跨领域的协调治疗，从而很难获得高质量的医疗保健服务。因此，患者必须独自应对日益复杂的医疗系统，而且许多人每次见到不同的医生，也增加了医疗问题被忽视的可能性。

商会建议湖北省和武汉市政府积极响应中央政府政策，鼓励初级护理医师培训；允许外国诊所提供长期处方，能直接管理外国人免疫接种，并对其进行测试，并能直接在办公室展示测试结果（例如结核菌素试验）。允许外国人使用国际医疗保险公司支付看病所产生的费用，这样外国和中国人都能从这些政策中获益，武汉也将对希望在华中建立业务的外国公司更具吸引力。

## 建议

### 对湖北省政府和武汉市政府：

- 拓展当前吸引和留住高级管理人才的策略，包括扩大高校和企业的合作平台、共同培养人才、允许大学教授在企业工作。
- 及时更新政府网站的英文页面，保障法律法规的透明度。
- 增建停车设施解决交通问题。
- 进一步开放银行业。
- 允许外国诊所扩大服务项目来改善外国人的医疗保障。

### 对美国政府：

- 为寻求在美国投资的中国投资者保障明确性和透明度。

ment policy, and to allow foreign clinics to provide long-term prescriptions, administer immunizations to foreigners directly, and perform tests and present the results in their offices (e.g., PPD tests). They should also be allowed to accept payment from international medical insurance providers. Not only would foreign and Chinese communities both benefit from such policies, Wuhan would become more attractive to foreign companies looking to establish business in Central China.

## Recommendations

### *For the Hubei and Wuhan Governments:*

- **Expand the current strategy of attracting and retaining senior management talent; this includes expanding platforms for universities and companies to work together on developing talent and allowing university professors to work in companies.**
- Provide greater transparency for laws and regulations by making prompt updates of the government website in English.
- Address traffic challenges by building more parking structures.
- Increase openness in the banking sector.
- Improve health care for foreigners by allowing foreign clinics to expand services.

### *For the US Government:*

- **Provide greater clarity and transparency for Chinese investors seeking to invest in the US.**



## Acronyms 缩写表

<b>AAL</b>	Approved Agent Lender
<b>ABAC</b>	Anti-Bribery and Anti-Corruption
<b>ABN</b>	Asset-backed notes
<b>ACP</b>	US-China Aviation Cooperation Program
<b>AIC</b>	Administration for Industry and Commerce
<b>AMAC</b>	Asset Management Association of China
<b>AMC</b>	Anti-Monopoly Commission
<b>AMEA</b>	Anti-Monopoly Enforcement Agency
<b>AML</b>	Anti-Monopoly Law
<b>ANAC</b>	National Civil Aviation Agency of Brazil
<b>APA</b>	Advance Pricing Arrangements
<b>APEC</b>	Asia-Pacific Economic Cooperation
<b>AQSIQ</b>	General Administration of Quality Supervision, Inspection, and Quarantine
<b>ASE</b>	Advanced Semiconductor Engineering
<b>ASME</b>	American Society of Mechanical Engineers
<b>ASTM</b>	American Society for Testing and Materials
<b>ATFM</b>	Air Traffic Flow Management
<b>AUCL</b>	Anti-Unfair Competition Law
<b>BASA</b>	US-China Bilateral Aviation Safety Agreement
<b>BCAN</b>	Broker Client Assigned Number
<b>BCM</b>	Billion Cubic Metres
<b>BEPS</b>	Base Erosion and Profit Sharing
<b>BFA</b>	Boao Forum for Asia
<b>BIS</b>	Bank of International Settlement
<b>BMI</b>	Basic Medical Insurance
<b>BRF</b>	Belt and Road Forum
<b>BRI</b>	Belt and Road Initiative
<b>CAAC</b>	Civil Aviation Administration of China
<b>CAC</b>	Cyberspace Administration of China
<b>CAC</b>	Codex Alimentarius Commission

<b>CBD</b>	Central Business District
<b>CBM/CMM</b>	Coal Bed Methane/Coal Mining Methane
<b>CBP</b>	US Customs and Border Protection
<b>CBRC</b>	China Banking Regulatory Commission
<b>CCAR</b>	China Civil Aviation Regulations
<b>CCC</b>	China Compulsory Certification
<b>CCPS</b>	Cybersecurity Classified Protection Scheme
<b>CCS</b>	China Classification Society
<b>CDS</b>	Credit Default Swap
<b>CDM</b>	Collaborative Decision Making
<b>CDM</b>	Clean Development Mechanism
<b>CEPA</b>	Closer Economic Partnership Arrangement
<b>CFA</b>	Chinese Football Association
<b>CFDA</b>	China Food and Drug Administration
<b>CFIUS</b>	The Committee on Foreign Investment in the US
<b>CFTC</b>	US Commodity Futures Trading Commission
<b>CHP</b>	Combined Heat and Power
<b>CIBM</b>	China Interbank Bond Market
<b>CII</b>	Critical Information Infrastructure
<b>CIPS</b>	Cross-border Inter-bank Payment System
<b>CIQ</b>	China Inspections and Quarantine Services
<b>CIT</b>	Corporate Income Tax
<b>CIRC</b>	China Insurance Regulatory Commission
<b>CMDE</b>	Center for Medical Device Evaluation
<b>CNCC</b>	Certificate of No Criminal Conviction
<b>CNG</b>	China National Games
<b>CNOOC</b>	China National Offshore Oil Corporation
<b>COMAC</b>	Commerical Aircraft Corporation of China
<b>CPC</b>	Communist Party of China

<b>CRA</b>	Credit Rating Agency
<b>C-ROSS</b>	China Risk-Oriented Solvency System
<b>CRS</b>	Common Reporting Standards
<b>CRS</b>	Computer-Related Service
<b>CSL</b>	Cybersecurity Law
<b>CSRC</b>	China Securities Regulatory Commission
<b>CTA</b>	Covered Tax Agreement
<b>CTO</b>	Chief Technology Officer
<b>DDGS</b>	Distiller's Dried Grains with Solubles
<b>DE</b>	Distributed Energy
<b>DEMPE</b>	Development, Enhancement, Maintenance, Protection and Exploitation
<b>DOC</b>	US Department of Commerce
<b>DOE</b>	US Department of Energy
<b>EASA</b>	European Aviation Safety Agency
<b>ECER</b>	Energy Conservation and Emissions Reduction
<b>ECWG</b>	Export Compliance Working Group
<b>EDS</b>	Express Delivery Service
<b>EDV</b>	Essentially Derived Varieties
<b>EIA</b>	US Energy Information Administration
<b>EIA</b>	Environmental Impact Assessments
<b>EP</b>	Exchange Participant
<b>ETS</b>	Emissions Trading System
<b>EVUS</b>	Electronic Visa Update System
<b>FAA</b>	Federal Aviation Administration
<b>FAQ</b>	Frequently Asked Question
<b>FCPA</b>	Foreign Corrupt Practices Act
<b>FDA</b>	US Food and Drug Administration
<b>FDI</b>	Foreign Direct Investment
<b>FI</b>	Financial Institution
<b>FIE</b>	Foreign-Invested Enterprise
<b>FTZ</b>	Free Trade Zone
<b>GA</b>	General Aviation
<b>GAAP</b>	Generally Accepted Accounting Principles
<b>GAC</b>	General Administration of Customs

<b>GAS</b>	General Administration of Sport of China
<b>GB</b>	Guobiao (National Standard)
<b>GBAS</b>	Ground-Based Augmentation System
<b>GCP</b>	Good Clinical Practice
<b>GDP</b>	Gross Domestic Product
<b>GDS</b>	Global Distribution System
<b>GHG</b>	Greenhouse Gas
<b>GLP</b>	Good Laboratory Practice
<b>GMO</b>	Genetically Modified Organism
<b>GMP</b>	Good Manufacturing Practice
<b>GPA</b>	Agreement on Government Procurement
<b>GUI</b>	Graphic User Interface
<b>HACCP</b>	Hazard Analysis and Critical Control Points
<b>HCP</b>	US-China Healthcare Cooperation Program
<b>HKEX</b>	Hong Kong Exchange
<b>HR</b>	Human Resources
<b>IAMC</b>	Insurance Asset Management Committee
<b>ICE</b>	Intercontinental Exchange
<b>ICT</b>	Information and Communications Technology
<b>ICV</b>	Intelligent and Connected Vehicle
<b>IEC</b>	International Electrotechnical Commission
<b>IEEE</b>	Institute of Electrical and Electronics Engineers Standards Association
<b>IGCC</b>	Integrated Gasification Combined Cycle
<b>ILS</b>	Instrument Landing System
<b>IOC</b>	International Oil Company
<b>IoV</b>	Internet of Vehicles
<b>IP</b>	Intellectual Property
<b>IPA</b>	Implementation Procedures for Airworthiness
<b>IPR</b>	Intellectual Property Rights
<b>ISO</b>	International Organization for Standardization
<b>ITU</b>	International Telecommunication Union



<b>IVD</b>	In Vitro Diagnostics
<b>JCCT</b>	US-China Joint Commission on Commerce and Trade
<b>JV</b>	Joint Venture
<b>KIIO</b>	Key Information Infrastructure Operators
<b>LCR</b>	Large Commercial Risks
<b>LIB</b>	Foreign Local Incorporated Bank
<b>LLP</b>	Life-Limited Parts
<b>LLP</b>	Low-Level Presence
<b>LNG</b>	Liquefied Natural Gas
<b>LSA</b>	Location Specific Advantages
<b>LTI</b>	Long-Term Incentive
<b>M&amp;A</b>	Mergers and Acquisitions
<b>MAD</b>	Mutual Acceptance of Data
<b>MEP</b>	Ministry of Environmental Protection
<b>MIIT</b>	Ministry of Industry and Information Technology
<b>MLB</b>	US Major League Baseball
<b>MLI</b>	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
<b>MLPS</b>	Multi-Level Protection Scheme
<b>MNC</b>	Multinational Corporation
<b>MOA</b>	Ministry of Agriculture
<b>MOC</b>	Ministry of Culture
<b>MOF</b>	Ministry of Finance
<b>MOFCOM</b>	Ministry of Commerce
<b>MOHRSS</b>	Ministry of Human Resources and Social Security
<b>MOHURD</b>	Ministry of Housing and Urban-Rural Development
<b>MOLAR</b>	Ministry of Land Resources
<b>MOT</b>	Ministry of Transport
<b>MoU</b>	Memorandum of Understanding
<b>MPS</b>	Ministry of Public Security
<b>MSCI Inc.</b>	Morgan Stanley Capital International Inc.
<b>MTN</b>	Medium Term Note

<b>NAFMII</b>	National Association of Financial Market Institutional Investors
<b>NBA</b>	US National Basketball Association
<b>NCA</b>	National Copyright Association
<b>NDRC</b>	National Development and Reform Commission
<b>NEV</b>	New Energy Vehicle
<b>NFL</b>	US National Football League
<b>NGO</b>	Non-Governmental Organization
<b>NHFPCC</b>	National Health and Family Planning Commission
<b>NO</b>	Network Operator
<b>NOC</b>	National Oil Company
<b>NPC</b>	National People's Congress
<b>NPO</b>	Non-Profit Organization
<b>NPLCC</b>	Net Present Lifecycle Costing
<b>OBOR</b>	One Belt One Road
<b>ODP</b>	Overall Development Plan
<b>OECD</b>	Organisation for Economic Cooperation and Development
<b>OEM</b>	Original Equipment Manufacturer
<b>OGIF</b>	US-China Oil and Gas Industry Forum
<b>PBOC</b>	People's Bank of China
<b>PCS</b>	Punitive Compensation System
<b>PII</b>	Personally Identifiable Information
<b>PFF</b>	Professional Faultfinder
<b>PFTZ</b>	Pilot Free Trade Zone
<b>PMA</b>	Parts Manufacturing Authorization
<b>PPD</b>	Purified Protein Derivative
<b>PPT</b>	Principal Purpose Test
<b>PRC</b>	People's Republic of China
<b>PRB</b>	Patent Review Board
<b>PSB</b>	Public Security Bureau
<b>PSC</b>	Production Sharing Contract
<b>PSU</b>	Professional Supervisory Unit
<b>PVP</b>	Plant Variety Protection
<b>QDII</b>	Qualified Domestic Individual Investor

<b>QDLP</b>	Implementation Measures on Pilot Program of Qualified Domestic Limited Partners
<b>QFII</b>	Qualified Foreign Institutional Investor
<b>R&amp;D</b>	Research and Development
<b>RFG</b>	Remanufactured Finished Goods
<b>RFID</b>	Radio Frequency Identification
<b>RMB</b>	Renminbi
<b>ROA</b>	Return on Assets
<b>RWE</b>	Real-World Evidence
<b>RQDII</b>	RMB Qualified Domestic Institutional Investors
<b>RQFII</b>	RMB Qualified Foreign Institutional Investor
<b>SAC</b>	Standardization Administration of China
<b>SAFE</b>	State Administration of Foreign Exchange
<b>SAFEA</b>	State Administration for Foreign Experts Affairs
<b>SAIC</b>	State Administration for Industry and Commerce
<b>SAPPRFT</b>	State Administration of Press, Publication, Radio, Film, and Television
<b>SAR</b>	Special Administrative Region
<b>SASAC</b>	State-Owned Assets Supervision and Administration Commission
<b>SAT</b>	State Administration of Taxation
<b>SCA</b>	State Cryptography Administration
<b>SCIO</b>	State Council Information Office
<b>SCLAO</b>	State Council Legislative Affairs Office
<b>SDGs</b>	Sustainable Development Goals
<b>SDO</b>	Standards Development Organization
<b>SDR</b>	Special Drawing Right
<b>SESAR</b>	Single European Sky ATM Research
<b>SHPGX</b>	Shanghai Petroleum and Natural Gas Exchange
<b>SIPO</b>	State Intellectual Property Office
<b>SME</b>	Small and Medium-Sized Enterprise
<b>SOEs</b>	State-Owned Enterprises
<b>SPB</b>	State Post Bureau

<b>SPIL</b>	Siliconware Precision Industries
<b>SWIM</b>	System Wide Information Management
<b>TC260</b>	China National Information Security Standards Technical Committee
<b>TIC</b>	Testing, Inspection, and Certification
<b>TMO</b>	Trademark Office
<b>TPA</b>	Third-Party Access
<b>TRAB</b>	Trademark Review and Adjudication Board
<b>TRQ</b>	Tariff Rate Quota
<b>TSA</b>	US Transportation Security Administration
<b>UL</b>	Underwriters Laboratories
<b>UGS</b>	Underground Gas Storage
<b>UMP</b>	Utility Model Patent
<b>UPMC</b>	University of Pittsburgh Medical Center
<b>US</b>	United States
<b>USCIS</b>	US Citizenship and Immigration Services
<b>USTDA</b>	US Trade and Development Agency
<b>VAT</b>	Value-Added Tax
<b>VATS</b>	Value-Added Telecommunications Services
<b>VFR</b>	Visual Flight Rules
<b>VPN</b>	Virtual Private Network
<b>WFOE</b>	Wholly Foreign-Owned Enterprise
<b>WHT</b>	Withholding Tax
<b>WTO</b>	World Trade Organization
<b>WTO/TBT</b>	WTO Agreement on Technical Barriers to Trade





This publication can be downloaded at [www.amchamchina.org/policy-advocacy/white-paper](http://www.amchamchina.org/policy-advocacy/white-paper)

# AmCham China

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