

Legal Practice | 法律实践

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Listing and Financing of Foreign Invested Enterprises in China: Policy and Practice

After foreign enterprises establish their subsidiaries in China (foreign invested enterprises, the "FIEs"), such FIEs often find it difficult to obtain financing support from overseas finance institutions due to the foreign exchange control and loan restrictions. Therefore, financing directly within China is crucial. For some medium-sized enterprises and start-ups, when their business expands or grows to a particular size, going public may be a viable financing option to take into account. In practice, some FIEs have successfully listed and financed in China's stock market, such as Beijing WKW Automotive Parts Co., Ltd.¹, Xiamen Cankun Industrial Co., Ltd.², AA Industrial Belting (Shanghai) Co., Ltd.³, NBTM New Materials Group Co., Ltd.⁴. FIEs listed after the promulgation of the Foreign Investment Law of the People's Republic of China (the "**Foreign Investment Law**") include Zelgen Biopharmaceuticals⁵, APsystems⁶, etc.

There are many benefits for the FIEs to seek listing in China, including:

- Rationalizing its investment scale and accomplishing investment objectives with the help of local capital;
- More quickly and efficiently expanding its Chinese market by cooperation with other strategic investors in China;
- Easier, almost no more restraints, participating in bidding activities and winning more business opportunities;
- Better enforcing compliance program by utilizing larger budget for compliance and adhering to stricter compliance-related rules of a listed com-

pany, thereby effectively reducing the probability of internal corruption;

- Easier and more smoothly implementing share incentives to managers and key employees, which could reduce personnel cost, increase team cohesion and stability, and decrease the risk of commercial secret leakage;
- Yielding huge gains by cashing out reduced shares in capital markets after a successful listing;
- Rapid appreciation of "shareholder equity" of parent company, and therefore e.g., easier for parent company to obtain the trust and support from international banks so as to obtain the loans after consolidation of the financial statements of the parent company and the listed company under its control.

It is noteworthy that the status of the overseas parent company as a private enterprise as well as its rights or obligations under the laws of its place of registration will remain unchanged after the listing of its subsidiary (i.e., the listed company) in China.

China is committed to creating an environment that is more favorable for foreign investment and giving national treatment to FIEs with respect to grant of license or permit, government procurement, standard-setting, "Made in China 2025" policy, technology projects, registration, etc. In accordance with Article 4 of the Foreign Investment Law, the State will give national treatment to foreign investments outside the negative list.

It should be noted that Chinese government is making an effort to encourage and support the listing and financing of FIEs in China. Article 17 of Foreign Investment Law states that FIEs may raise funds by means of public offering of shares, corporate bonds or other securities. In accordance with the Notice on Promulgation of the Several Policies and Measures for Expanding the Increment, Stabilizing the Stock and Improving Quality of Foreign Investment with Emphasis on Manufacturing Sector jointly promulgated by the National Development and Reform Commission, Ministry of Commerce, Ministry of Industry and Information Technology, Ministry of Natural Resources, Ministry of Ecology and Environment and Ministry of Transport on 13 October 2022, qualified FIEs are encouraged to raise funds by listing on the Main Board, the Technology and Innovation Board, the Growth Enterprise Board and Beijing Stock Exchange, and listing on the Basic and Innovative Tiers of the National Equities Exchange and Quotations (“NEEQ”, an over-the-counter stock market, also known as the New Third Board) and issuing corporate credit bonds. Such positive policies provide an opportunity to the FIEs of European enterprises with leading advantage in manufacture industry. Supporting FIEs of European enterprise to develop their business in China and making full use of their advantages in manufacturing are in line with the Chinese government’s policy direction to promote the development of the manufacturing industry. Additionally, FIEs of European enterprises typically have a good reputation for adhering to legal requirements in the areas of taxation, labor and employment, environment protection when conducting business activities in China, which is also an advantage compared to some local enterprises. As a result, they will receive great attention and favor from the Chinese investing institutions, especially from the private equity funds or venture capital institutions.

In addition to the above-mentioned special policy preferences for FIEs, in fact, in recent years, China’s capital market has also undergone many systemic changes, including the much-watched registration system reform, the establishment of the Technology and Innovation Board, the establishment of the Beijing Stock Exchange as well as the connection function between the NEEQ and other Boards, etc., which have further optimized the listing threshold and conditions, and created more possibilities for companies (be it FIEs or other types of companies) to list in China. For FIEs which are active in China with financing needs, it is undoubtedly a good opportunity. We will elaborate such change and provide an overview in our next article.

¹ Erbslöh Aktiengesellschaft Co., Ltd., a German company, is the second largest shareholder with 47% of BWKW’s total shares immediately before IPO. The main business of BWKW is manufacturing of auto parts, including exterior decoration products, interior decoration products, intelligent electronic system products, key functions.

² Fordchee Development Limited, EUPA Industry corporation Limited, Fillman Investments Limited, three Hong Kong companies, are the first, second and fourth largest shareholders totally holding 44.68% of Cankun’s shares. And the three companies are controlling shareholders and affiliated to each other. The main business of Cankun is manufacturing of household electrical appliances.

³ Tu Mulin and Cai Ruimei, a couple from Taiwan, hold 66.94% of AAIB’s shares in total. The main business of AAIB is the research and development, production and sales of light conveyor belt.

⁴ Mutsumi Special Alloy Industry Co., Ltd., a Japanese Company, is the largest shareholder with 13.86% of NBTM’s shares. The main business of NBTM is the production and sales of powder metallurgy mechanical structure parts and soft magnetic materials.

⁵ Foreign shareholders include ZELIN SHENG (U.S. citizenship), JACKIE ZEGI SHENG (U.S. citizenship) and ALPHA Achieve Limited (Hong Kong company), with pre-listing shareholdings of 27.6%, 6.8% and 0.8%, respectively, the total foreign shareholding is 35.2%. The company’s main business is innovative drug research and development.

⁶ Foreign shareholders include Zhimin Ling (US citizenship), Yuhao Luo (Chinese citizenship with US permanent residence), Lonseth Inc. (US company) and Olivier Jacques (foreign, nationality not disclosed in the prospectus), with pre-listing shareholdings of 19.32%, 16.48%, 0.9% and 0.9% respectively, the total foreign shareholding is 37.6%. The company’s main business is the research and development, production and sales of component-level power electronics in photo-voltaic power generation systems.

外资企业在中国上市融资：政策与实践

外国企业在中国设立外商投资企业（以下简称“**外资企业**”）后，由于外汇管制和贷款的限制，外资企业难以及时获得境外金融机构的资金支持。因此，外资企业获得境内融资尤为重要。对于中型企业以及初创型企业而言，如果企业保持良好发展并不断扩大规模，上市也是值得考虑的一种融资途径。事实上，已有不少外资企业在中国股市上市融资的先例，其中包括京威股份¹、闽灿坤²、艾艾精工³、东睦股份⁴等。在《中华人民共和国外商投资法》（以下简称《**外商投资法**》）颁布后上市的外资企业包括泽璟生物⁵、昱能科技⁶等。

对于外资企业而言，在中国的资本市场寻求上市，可以获得以下好处：

- 控制自身投资规模，借助外来资本完成投资计划；
- 与中国境内的战略投资者合作，更加迅速高效地拓展中国市场；
- 在需要招投标的项目中，几乎可以不受约束地参加投标，并因此赢得更多的商业机会；
- 借助上市公司的资金和规则，更有利于做好合规工作，并因此有效地减少内部腐败；
- 更方便、顺畅地对公司高管和关键员工进行股权激励，从而减少人事成本、增加团队凝聚力和稳定性，以及降低公司商业秘密流失的风险；
- 公司成功上市后，母公司可通过减持股份在资本市场迅速套现，从而获得巨大的资本收益；

- 境外母公司的“所有者权益”迅速增值，例如在母公司与其控制的上市公司的财务报表合并之后，母公司可以更加容易地获得国际银行的信任和支持，获得贷款。

需要强调的是，境外母公司持股的中国境内公司上市之后，该境外母公司作为私人企业的地位没有发生改变，其依照注册地法律所拥有的权利义务不发生任何变化。

中国目前致力于改善外商投资环境，在资质许可的授予、政府采购、标准制定、“中国制造2025”政策、科技计划项目、企业上市、注册登记等方面给予内外资企业同等待遇。《外商投资法》第四条亦明确提出，国家对负面清单之外的外商投资，给予国民待遇。

中国政府对外资企业上市融资的鼓励和支持值得关注的。新的《外商投资法》第17条规定，外商投资企业可以依法通过公开发行股票、公司债券等证券和其他方式进行融资。2022年10月13日，中国国家发展和改革委员会、商务部、工业和信息化部、自然资源部、生态环境部、交通运输部联合发布《关于以制造业为重点促进外资扩增量稳存量提质量的若干政策措施》，提出“支持符合条件的外商投资企业通过在主板、科创板、创业板、北京证券交易所上市，在新三板基础层和创新层挂牌，以及发行公司信用类债券进行融资。”这些积极的措施对于在制造业上拥有领先优势的欧洲企业设立的外资企业而言更是一种机遇。支持此类外资企业在中国发展并充分利用其在制造业上的优势，符合中国政府推动制造业发展的政策方

向；此外，欧洲企业设立的外资企业在中国运营中对于财税、劳动和环保领域法律的遵守，也是与本土企业相比的一大优势，受到中国的投资机构，尤其是私募基金或风投机构的关注和青睐。

除了上述对外商投资企业的特殊政策倾斜，事实上，近几年来，中国资本市场也在经历了诸多系统性变革，包括备受关注的注册制改革、科创板设立、北交所设立及打通新三板与其他板块联通功能等，这些变革进一步优化了上市门槛和条件，为公司（无论是外商投资企业还是其他类公司）在境内上市创造了更多可能。这对于活跃在中国的有融资需求的外资企业而言，无疑是一个良好的机遇。就此类变革的概况，本所将在本系列专题下一篇文章集中展开。

19.32%，16.48%，0.9%及0.9%，外资合计持股比例为37.6%。公司主营业务为光伏发电系统中组件级电力电子设备研发、生产及销售。

¹德国法人股东埃贝斯乐股份有限公司，上市前持股比例为47%，为公司第二大股东。京威股份的主营业务为汽车零部件，包括外饰件产品、内饰件产品、智能电子系统产品、关键功能。

²香港法人股东Fordchee Development Limited, EUPA Industry corporation Limited, Fillman Investments Limited为公司第一第二第四大股东，合计持股比例44.68%，三家公司系关联公司，为公司控股股东。闽灿坤的主营业务为小家电制造。

³台湾自然人股东涂木林与蔡瑞美合计持股比例66.94%，系夫妻关系。艾艾精工的主营业务为轻型输送带的研发、生产及销售。

⁴日本法人股东睦特殊金属工业株式会社，持股比例为13.86%，为公司第一大股东。东睦股份的主营业务为粉末冶金机械结构零件和软磁材料的生产及销售。

⁵外资股东包括ZELIN SHENG（盛泽林）（美国国籍）、JACKIE ZEGI SHENG（盛泽琪）（美国国籍）及 ALPHA Achieve Limited（香港公司），上市前持股比例分别为27.6%，6.8%及0.8%，外资合计持股35.2%。公司主营业务为创新药物研发。

⁶外资股东包括凌志敏（美国国籍）、罗宇浩（中国国籍但拥有美国永居权）、Lonseth Inc.（美国公司）及奥利维耶雅克（外籍，招股书未披露具体国籍），上市前持股比例分别为

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