



# 天涯咫尺 Offshore bound

在中国和国际监管部门联手打击避税行为的同时，领先的离岸法域心系中国客户的利益，在构建合规、安全避风港的道路上步步前行，黎爱莲为您报道。

*As China and international regulators join hands to fight tax avoidance, the leading jurisdictions are setting the pace for compliant and safe sanctuary with Chinese interests well in mind, writes Alainna Wrigley*

去年11月，在布里斯班举行二十国集团领导人第九次峰会前，习近平发表了演讲，这是中国最高领导人首次在国际重大政治场合就税收问题发表重要意见。他向其他国家的领导人提出了四项提议，其中一项正好迎合了正在进行的关于中国和全球避税和腐败的讨论。习近平提出，“加强全球税收合作，打击国际逃税，帮助发展中国家和低收入国家提高税收征管能力”。

习近平的呼吁收到了很好反响。在峰会闭会的公报上，二十国领导人重申他们对经合组织税基侵蚀和利润转移（BEPS）行动

In a speech before the G20 Leaders' Summit in Brisbane this past November, President Xi Jinping made history by being the first Chinese president to speak out on issues of taxation on a high-profile, international stage. Among his four proposals to his fellow leaders was a motion in line with ongoing discussions on tax evasion and corruption in China and around the world. "Global tax cooperation," Xi affirmed, "should be strengthened to combat international tax evasion and avoidance, and help emerging and low-income countries improve their tax administration capabilities."

## 中国利用[BEPS]项目的成果改善其境内的税务制度

*China uses the fruits of the BEPS project to improve its domestic tax regime*



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计划的承诺，并核准统一报告标准。他们呼吁其他金融中心加入他们的行列，包括发展中国家的金融中心，同时誓言为建立良好的税务管理和自动信息交换机制而提供协助。

国际监管者加紧管控为离岸法域带来了越来越大的压力，但它们的竞争力不只在有吸引力的税务制度。离岸法域一直在努力建立良好的、人性化的法律系统，同时也利用自身的地理优势去吸引包括中国投资者在内的外国投资者。

### 打击逃税

随着中国在 70 年代末开始改革开放，腐败问题一直困扰着中国。全球金融诚信组织在 2014 年的一份报告指出，在 2003 年到 2012 年间，有 1.3 万亿美元非法资金从中国大陆流出，而单单是 2012 年就有 2500 亿美元流出。这是全球 151 个法域中最高的。

“众所周知，[国家税务总局]正在检视中国有关海外投资的税务政策、目前适用的税务法规的合规问题，以及将可能对中国境外投资有所影响的未来政策动态，”德勤会计师事务所驻北京合伙人张博指出。

在 2011 年，国家税务总局将打击避税纳入其工作计划中，以协助中国达成第十二个五年规划中加大力度打击腐败的目标。国家税务总局作出的努力还包括，提高对非居民企业的税务监管，改善与其他法域的信息交换机制以及加大打击逃税的政策和立法力度。

此后，在一系列国际行动的推动下，中国一直努力尝试将全球税务合作和反避税放在政策前沿位置。

“中国将经合组织的 BEPS 项目视为很好的契机去重建更公平和透明的国际税务环境，”金杜律师事务所驻北京合伙人段桃说。同时，她提到：“中国利用这个项目的成果改善其境内的税务制度，特别是在反避税法规方面。”

在过去一年里，中国发布了多份旨在打击避税的文件。

在去年 12 月，国家税务总局通过了《一般反避税管理办法（试行）》。这个试行办法的发布正好响应了习近平对打击避税集团的

Xi's call was well received. In the G20 Leaders' Communiqué issued at the end of the summit, they reiterated their commitment to the Organization for Economic Co-operation and Development (OECD) Action Plan on Base Erosion and Profit Shifting (BEPS), and endorsed its common reporting standard. The leaders called for other financial centres to join them, including those of developing countries, pledging their assistance in building sound tax administration and automatic information exchange.

The tightened grip of international regulators has put increasing pressure on offshore jurisdictions, but their competitive edges lie not merely in attractive tax regimes. Offshore jurisdictions have been making considerable effort to build legal and regulatory systems that are sound and accessible, while at the same time leveraging their geographical advantages to attract foreign investors, including those from China.

### On the offensive against tax evasion

Corruption has been a persistent concern since China opened its doors to the world economic reforms at the end of the 1970s. According to a 2014 report by Global Financial Integrity, mainland China lost US\$1.3 trillion in illicit financial outflows between 2003 and 2012 – US\$250 billion in 2012 alone. This was the highest of the 151 jurisdictions surveyed.

“It is widely known that the [State Administration of Taxation (SAT)] is reviewing Chinese tax policy in relation to outbound investment, as well as compliance with currently applicable tax rules, and future developments in relation thereto would have an impact [on Chinese investment offshore],” Julie Zhang, a partner of Deloitte China based in Beijing, points out.

In 2011, SAT included tackling tax evasion among its schemes to support China's 12th Five-year Plan's goal to increase efforts to fight corruption. Efforts laid out by SAT include improving the tax supervision of non-resident companies, ameliorating information exchange with other jurisdictions and increasing policy and legislative efforts to fight evasion. Since then, China has endeavoured to put global tax cooperation and anti-tax avoidance at its policy forefront, bolstered by a number of international efforts.

“China regards the BEPS project as a good opportunity to rebuild a more fair and transparent international tax environment,” comments Daisy Duan, a partner of King & Wood Mallesons in Beijing. At the same time, she notes, “China uses the fruits of the BEPS project to improve its domestic tax regime, especially anti-avoidance rules.”

Over the past year, China has issued a number of documents aimed at combatting tax avoidance.

SAT in December 2014 passed the Measures on the Administration of the General Anti-Avoidance Rule (for Trial Implementation). These measures, issued expediently in response to Xi's call to anti-evasion arms, define “tax avoidance arrangements” as those made solely to obtain tax benefits, and which, in form, are legally compliant, yet are non-compliant insofar as their economic substance.

In March, SAT issued the Announcement on Enterprise Income Tax Issues Related to Payments by Enterprises to Offshore Affiliates (Announcement 16), setting out rules that could be a particular issue for companies with offshore variable interest entities, which generally have no substantial business operations overseas. (For greater detail, see *New tax rules aim at VIE-structured companies* in our April 2015 issue.)

要求，将“避税安排”界定为具有以下特征：（一）以获取税收利益为唯一目的或者主要目的；（二）以形式符合税法规定、但与其经济实质不符的方式获取税收利益。

在今年3月，国家税务总局发布了《关于企业向境外关联方支付费用有关企业所得税问题的公告》（16号公告）。其中一些规定针对含有可变利益实体（VIE）架构的企业，而VIE架构在海外一般没有实质性的商业运作。（见《商法》第6辑第4期第5页《税收新规瞄准含有VIE架构的中国企业》）

“尽管不少人认为16号公告主要影响到境内投资，”张博说，“它对部分中国大陆公司的离岸架构也有影响。这是因为，尽管很多中国公司是其中境内总部集团的一部分，仍然要向被用作集团部分离岸架构的离岸实体支付劳务费和特许权使用费。”

“这些规定是基于中国对二十国所推动的经合组织BEPS原则和行动计划接受，”康德明律师事务所香港办事处合伙人兼联席主席林大维说。“新法适用于以下情况：在中国的资产实质上为离岸公司所拥有，并且该资产作为股权销售的结果被间接售予该资产的控股公司或者间接控股公司。”

在今年2月，国家税务总局发布了《关于非居民企业间接转让财产企业所得税若干问题的公告》（7号公告）。根据公告，“不具有合理商业目的”的、令企业逃避缴纳企业所得税的离岸企业间接转让中国实体和财产，应被视为直接转让中国应税资产，因此需要缴纳中国企业所得税。

Bedell Cristin 律师事务所驻新加坡合伙人 Stephen Adams 说，项规定类似于其他国家的一些现有规定，对于这个变化，在英属维尔京群岛注册的中国投资者不需担忧。“很大程度上，这是因为亚洲投资者对于离岸工具的使用已经越来越熟练，”他说。

但这不代表中国想要限制境内投资者走出去，事实刚刚相反。在着手控制逃税的同时，中国也在积极地为外汇交易松绑，方便中国的海外投资。在过去一年，国家外汇管理局发布的《跨境担保外汇管理规定》生效，中国实体无需得到国家外汇局的批准就可以为其中国资产提供贷款担保，以保证其海外母公司或者分公司的贷款需要。

**[这些新规则]是因为亚洲投资者对于离岸工具的使用已经越来越熟练**

*[The new rules are] due to increased sophistication in the use of offshore vehicles by Asian investors*



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**在很多个案中，税务因素并不是使用离岸架构的主要原因**

*In many cases taxation is not the prime reason for using offshore companies*



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“Although Announcement 16 is widely viewed as principally affecting inbound investment,” notes Deloitte’s Zhang, “it will also impact mainland Chinese companies in relation to their offshore structures. This is because many mainland Chinese companies, notwithstanding being a part of mainland Chinese headquartered groups, still make service fee and royalty payments to offshore entities which are part of offshore structures used by those groups.”

“These rules are based on China’s acceptance of the OECD’s BEPS principle and the BEPS Action Plan promoted by the G20,” says David Lamb, partner and co-chair of Conyers Dill & Pearman’s Hong Kong office. “The new law applies where an asset in China is beneficially held by an offshore company and that asset is indirectly sold as a result of the sale of the shares in the company holding, or indirectly holding, the asset.”

In February, SAT issued the Announcement on Certain Enterprise Income Tax Issues Related to the Indirect Assets Transfer of Non-resident Enterprises (Announcement 7). Per the announcement, indirect asset transfers of Chinese entities and property by offshore enterprises which lack a “reasonable commercial purpose” and which result in avoidance of enterprise income tax will be deemed a direct transfer of China taxable assets and therefore subject to Chinese enterprise income tax.

This development is not a concern for Chinese investors in the British Virgin Islands (BVI), according to Stephen Adams, a partner of Bedell Cristin in Singapore, who calls the rule similar to those in other countries. “In great part, this is due to an increased sophistication in the use of offshore vehicles by Asian investors,” he says.

But it is not China’s intent to prevent investors from going abroad – far from it. At the same time as China has made strides to curb tax evasion, she has also made positive moves to loosen constraints on transactions of foreign exchange to facilitate Chinese investment offshore.

In the past year, the Regulations on the Administration of Cross-border Guarantee of Foreign Exchange took effect. These regulations allow a Chinese entity to provide a loan guarantee over its Chinese assets without prior approval from the State Administration of Foreign Exchange, in order to secure loans for its parent company or subsidiary based offshore.

## 国际合规为先

对于中国的离岸投资者，来自多方面的监管压力不断增加。

“带有跨境架构的中国公司应该密切关注国际税务管理规则的变化，”金杜的段桃说。

“而且还要准备披露更多信息，以及面对因不同国家税务部门合作而带来的挑战。”

国际上，最近重要的法律动态有美国的《海外账户税务合规法》(FATCA)、经合组织的《税基侵蚀和利润转移行动计划》(BEPS行动计划)，以及《金融账户涉税信息自动交换标准》(统一报告标准)。

FATCA 依靠外国金融机构提供的美国公民税务信息以阻止美国公民避税。各主要的离岸法域已经和美国签署了有关信息交换的政府间协议，而包括中国在内的其他法域则达成了“实质性的协议”。这个举动可能正好配合中国打击避税的工作，让中国可以获得在美国的中国纳税人的信息。

“主要的经济体正在努力阻止避税逃税，这也是很自然的，”Forbes Hare 律师事务所驻开曼群岛及英属维尔京群岛合伙人 José Santos 说。

Forbes Hare 律师事务所驻伦敦投资基金业务全球负责人 Catherine Ross 提到，英属维尔京群岛和中国之间关于税务信息交换的协议，让中国税务部门“很有可能向英属维尔京群岛注册的中国公司就其所有交易和收入征税”。类似的信息交换协议也存在于中国和其他八个离岸法域之间，当中包括开曼群岛、马恩岛、耿西岛和泽西岛。

这些协议对于经合组织 BEPS 行动计划和统一报告标准的实施有重大的意义。

这个基于美国 FATCA 政府间协议的统一报告标准已经网罗了 51 个法域，其中包括很热门的离岸目的地，例如英属维尔京群岛、开曼群岛，两者同意从 2017 年开始信息交换，另外还有包括中国在内的 35 个法域同意从 2018 年开始信息交换。

经合组织的 BEPS 行动计划获二十国核准，旨在打击对产生自各法域内的利润进行转移的逃税行为，其第一阶段将会在今年晚些

## 所有国家和金融中心都会受到 BEPS 的影响

*All countries and financial centres will be affected by BEPS*



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## International compliance a priority

For the Chinese offshore investor, there is increasing regulatory pressure on multiple fronts.

“Chinese companies with cross-border structures should closely monitor the changes of international tax administration rules,” says King & Wood Mallesons’ Duan, “[and] prepare to disclose more information and face the challenges from cooperation among tax authorities of different countries.”

Internationally, influential recent developments have been the US Foreign Account Tax Compliance Act (FATCA), as well as the OECD’s BEPS Action Plan and the Standard for Automatic Exchange of Financial Account Information in Tax Matters (the common reporting standard).

FATCA relies on foreign financial institutions to provide tax information of US nationals so as to prevent US tax evasion. Major offshore jurisdictions have signed intergovernmental agreements on information exchange with the US, while other jurisdictions, including China, have reached “agreements in substance”. This move could bode well for China’s efforts to combat tax evasion, allowing China to obtain information on its US-based taxpayers.

“It is natural that major economies are working to prevent both tax avoidance and evasion,” says José Santos, the head of corporate and managing partner of Forbes Hare based in the Cayman Islands and BVI.

Catherine Ross, the global head of Forbes Hare’s investment funds’ practice in London, notices this cooperation in the tax information exchange agreement between the BVI and China, allowing Chinese tax authorities to “potentially tax any transactions and earnings of [Chinese-owned] BVI companies.” Similar exchange agreements exist between China and eight other jurisdictions, including the Cayman Islands, Isle of Man, Guernsey and Jersey.

These agreements play a strong role in implementing the OECD’s BEPS Action Plan and the common reporting standard, which is based on a FATCA intergovernmental agreement. A total of 51 jurisdictions, including many of the popular offshore destinations such as the BVI and Cayman Islands, have agreed to start exchanges from 2017, and an additional 35, including China, have agreed to start from 2018.

The first phase of OECD’s G20-endorsed BEPS Action Plan to combat tax avoidance through the shifting of profits from jurisdictions where they were made is scheduled to end later this year.

“The OECD BEPS project has been one of the most significant developments in terms of possible future impact on how groups and companies structure their investments internationally,” says Andrew Doyle, the managing partner of Maples and Calder’s Dublin’s office.

Guernsey International Finance Centre’s China representative, Wendy Weng, notes that, “All countries and financial centres will be affected by BEPS.”

“Most offshore jurisdictions, including the BVI and Cayman Islands, actively cooperate with the rest of the world to tackle BEPS,” states Ross, pointing to the bilateral and multilateral agreements mentioned above, as well the domestic policies to implement them.

Jurisdictions may comply with the BEPS Action Plan – to not do so would cause reputation damage that could undoubtedly harm business – but the plan is not without its detractors. Critics question its motivations and underlying assumptions.

The BEPS Action Plan “ignores the fact that tax competition is beneficial because competition introduces accountability and

## [以伦敦为人民币结算基地]让英国公司可以更便捷地使用人民币

*[Renminbi clearing in London] should make it easier for UK companies to use the Chinese currency*



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时候结束。“经合组织的 BEPS 项目已经成为各个集团和企业在设计自己的国际投资结构时必须考虑的最重要的潜在影响因素之一，”迈普达律师事务所都柏林办事处管理合伙人 Andrew Doyle 说。

欧西金融发展局中国区首席代表翁玮说：“所有国家和金融中心都会受到 BEPS 的影响。”

提到前面所述的双边和多边协议，以及在境内实施这些协议的政策，Ross 说，“大多数离岸法域，包括英属维尔京群岛和开曼群岛，都在积极与世界其他地区合作解决 BEPS 方面的问题。”

各个法域可能会遵守 BEPS 行动计划，因为不遵守可能会损害声誉并肯定会对业务造成影响。但并非没有人对此提出异议。有声音就质疑这个计划的动机以及潜在的假设。

“[BEPS 行动计划] 忽略了税务竞争的好处，因为竞争会带来责任和效率，否则就很可能出现在征税问题上国家主权权利不受约束的状态，”林大维说，“可能更重要的是，它忽略了另一个事实：正是被许多国家宣称有不良税务实践的离岸国际金融中心实际上在推进着对这些国家的外国直接投资。”

“我们也想强调，在很多个案中，税务因素并不是使用离岸架构的主要原因，”林大维补充说。实际上，很多人都赞同马恩岛政府经济发展部主管 Steven Beevers 的话，不应该将他们的离岸法域比作是“吸引跨国公司设置人为架构的法域”。

### 加勒比海法域

离岸投资在公众的聚焦下正经历着一个前所未有的时刻。泽西岛财经事务局大中华区业务发展总监张裕梅说，最重要的是，中国企业要寻求符合并且优于国际规则的离岸法域。

“运用离岸架构的大体原因在于它们灵活、方便以及容易使用，而且被国际投资者所接受，”奥杰律师事务所上海代表处合伙人施煜琼说。

在国际环境中合规、灵活、方便、简单——对于中国投资者，这是提到英属维尔京群岛和开曼群岛时让他们立刻想到的特点。加勒比海诸岛长期以来就吸引着中国人的兴趣，并且没有停止的

efficiency in what would otherwise largely be the unfettered, sovereign right of a government to impose taxation,” Lamb says. “Perhaps more importantly, [it ignores] the fact that the international financial centres actually promote foreign direct investment in many of the very countries which allege harmful tax practices.”

“We would also stress that in many cases taxation is not the prime reason for using offshore companies,” adds Lamb. Indeed, many echo Steven Beevers, head of special projects in the Isle of Man Department of Economic Development, in distinguishing their offshore jurisdictions as not being “a jurisdiction that has attracted artificial structures by multinationals”.

### Caribbean beats a familiar rhythm

With offshore investment experiencing an unprecedented moment in the public limelight. Yumei Zhang, Jersey Finance’s business development director in greater China, notes that it is all the more vital that Chinese businesses seek offshore jurisdictions which meet and surpass international rules.

“The whole point of using offshore structures is that they’re flexible, convenient, and easy to use, and also accepted by international investors,” says Kristy Calvert, Ogier’s managing director for China, based in Shanghai.

Internationally compliant, flexible, convenient, easy – for the Chinese investor, the BVI and Cayman Islands immediately come to mind. The Caribbean islands long have drawn Chinese interest, and there is no sign of stoppage. A 2014 report from the US-China Economic and Security Review Commission estimates that 99.5% of the US\$62.1 billion of outward foreign direct investment into the Caribbean in 2012 flowed into the BVI and Cayman Islands only.

The islands’ attractive taxes – or lack therefore – may seem their obvious advantage, but Santos says, “It is important to stress that the popularity and success of the BVI and Cayman Islands do not necessarily lie in their favourable tax regimes, although it is an important [reason].”

The islands have done much to welcome Chinese investment. Recently the BVI have established two presences in Hong Kong, a BVI Financial Services Commission office and BVI House Asia, their international financial centre’s local representative. Having this local representation offers considerable conveniences. Bedell Cristin’s Adams notes that original certificates of good standing can be obtained from BVI House Asia – evidence of greater engagement with, and ability to cater to, the local Asian markets.

“Both Cayman and BVI can be used as a listing vehicle for the Hong Kong Stock Exchange, but Cayman is dominant in this space and is also a much more popular jurisdiction for the establishment of closed- and open-ended offshore funds,” says Jonathan Culshaw, the managing partner of Harneys’ Hong Kong office.

“Cayman Islands company law is relatively simple and straightforward,” says Greg Knowles, partner and head of corporate of Maples and Calder’s Hong Kong office.

“Cayman companies are simple to operate – there is no requirement to hold an annual shareholders’ meeting or to conduct an annual audit – and, an important point often forgotten, Cayman Islands legal advice is available, increasingly in Chinese, from lawyers with broad and deep experience of significant corporate transactions during the business day in Asia,” he adds, noting that the BVI share many of these advantages.

迹象。美中经济安全审查委员会 2014 年的一份报告估计，中国对加勒比海地区的 621 亿美元投资中就有 618 亿美元 (99.5%) 流向英属维尔京群岛和开曼群岛。

这些岛屿有吸引力的征税安排——或者说也可以说没有多少税收——可能是它们的明显优势，但 Santos 说：“需要强调的是，英属维尔京群岛和开曼群岛受到青睐并获得成功，并不一定全然是因为其有利的税务制度，尽管这是一个重要的原因。”

这些群岛做了很多努力去吸引中国投资。最近英属维尔京群岛就在香港设立了两个办事处，一个英属维尔京群岛金融服务委员会办公室以及 BVI House Asia，后者是其国际金融中心在当地的办事处。在当地设有办事处会带来一定的方便。Bedell Cristin 律师事务所的 Stephen Adams 指出，公司状况良好证明书可以从 BVI House Asia 获得，这是英属维尔京群岛更深入参与并有能力照顾亚洲当地市场的证明。

“开曼群岛和英属维尔京群岛都能被用作在港交所上市的工具，但开曼群岛在这个领域更为主流而且更受欢迎，无论是对于封闭式的还是开放式的离岸基金，”衡力斯律师事务所香港办事处的管理合伙人 Jonathan Culshaw 说。

“开曼群岛公司法相对简单直接，”迈普达律师事务所香港办事处合伙人兼公司业务团队主管 Greg Knowles 说。“在开曼群岛营运公司操作简单，没有年度股东会议或年度审计等要求，而且，经常被忽略的一点是，客户可以从专业律师那里获得越来越多的中文法律服务，这些律师对当天亚洲的重要公司交易有广博兼具深度的经验，”他说，也同时指出英属维尔京群岛有很多类似的优势。

## 欧洲大门

爱尔兰、泽西岛、耿西岛和马恩岛都因为它们接近欧洲特别是英国而让投资者受益。

而且，汇嘉律师事务所驻香港合伙人 Arwel Lewis 预计，尽管常规的离岸目的地英属维尔京群岛和开曼群岛的吸引力不会减少，

**[开曼和维尔京群岛]客户可以从专业律师那里获得越来越多的中文法律服务**

*[Cayman and BVI] legal advice is available, increasingly in Chinese ... during the business day in Asia*



**Greg Knowles**  
迈普达律师事务所合伙人  
兼公司业务团队主管  
香港  
Partner and Head of  
Corporate, Maples and  
Calder, Hong Kong

**开曼群岛和英属维尔京群岛都能被用作在港交所上市的工具**

*Both Cayman and BVI can be used as a listing vehicle for the Hong Kong Stock Exchange*



**Jonathan Culshaw**  
衡力斯律师事务所  
管理合伙人  
香港  
Managing Partner  
Harneys  
Hong Kong

## European gateway

Ireland, Jersey, Guernsey and the Isle of Man all benefit investors with their proximity to the rest of Europe, particularly the UK.

And, while the appeal of the BVI and Caymans will not diminish, Walkers' Hong Kong-based partner Arwel Lewis expects that there will be greater use as well of "Jersey and Irish structures for outbound investments by Chinese state-owned enterprises and private entities, both as holding companies for external investments and to provide investment capital in investment funds for outbound investment".

Maples and Calder's Knowles states, "There are in place several agreements between the PRC and the Irish government aiming to boost links between these countries," including a double taxation treaty and MOUs on promoting bilateral trade in services and a working group promoting investment between the two countries.

Ireland, whose economy experienced the highest growth in Europe in 2014, benefits from membership in both the OECD and the European Union. Many flag it as a jurisdiction to watch in the near future. Doyle of Maples and Calder says, "There has been interest from Chinese businesses in using Ireland as a holding company jurisdiction for underlying investments in European countries."

The aviation finance and leasing market continues to attract investors to Ireland. "Ireland's traditional strengths in aircraft leasing have led to its use by Chinese financiers and lessors," Doyle says.

Indeed, the Emerald Isle boasts 40 years of aviation finance experience and nine of the top 10 international aircraft finance firms, and China's Bank of Communications, ICBC and China Development Bank have also established leasing operations in Ireland to support the expected 6,000 aircraft to be delivered to Chinese airlines in the next two decades.

Weng of Guernsey Finance also sees potential for aviation investments in her bailiwick. "The island has also now introduced limited liability partnership legislation and an aircraft registry," she notes.

Guernsey fund structures can be used to invest into Europe in many ways, Weng says, including infrastructure and renewable

“不过对于中国国有企业和私有企业而言，无论是作为对外投资的控股公司还是为海外投资基金提供投资，泽西岛和爱尔兰的公司架构在其海外投资中”都会得到更多运用。

迈普达律师事务所的 Knowles 介绍说，“爱尔兰和中国之间有多个旨在提高两国关系的协议”，其中包括一份避免双重征税协定和多份推进双边贸易的谅解备忘录，以及一个推进两国投资的事务委员会。

爱尔兰从加入经合组织和欧盟中获益，其在 2014 年的经济增长率为欧洲最高。很多人将其称为一个值得留意的法域。迈普达的 Doyle 说：“这一直吸引中国企业将爱尔兰用作对欧洲国家的潜在投资的控股法域。”

航空金融和租赁业务继续吸引投资者到爱尔兰。“爱尔兰在航空租赁领域的优势让中国金融人士和租赁人士使用其航空租赁，” Doyle 说，实际上，爱尔兰号称有四十年的航空金融经验，而且最顶尖的 10 个国际航空金融公司中有 9 个都在爱尔兰，而中国交通银行、工商银行以及中国发展银行都已经在爱尔兰设立了租赁业务，以支持将来 20 年预计要送往中国航空公司的 6000 架飞机。

翁玮在耿西岛也看到了发展航空投资的可能性，“耿西岛已经在立法中引入了有限责任合伙制和飞机注册制”。

耿西岛基金架构可以用在投资欧洲的多个领域，翁玮说，包括

energy. “Of course,” she adds, “Guernsey funds can also be used for investing back into China.”

According to Jersey Finance’s Zhang, Jersey’s introduction of foundations in 2009 has proved popular in Asian markets.

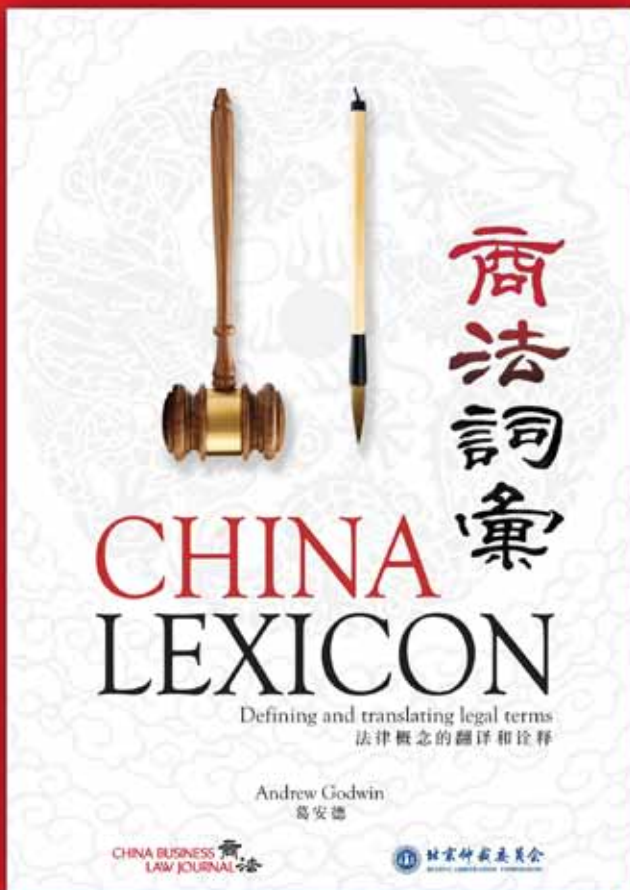
Zhang also points out the People’s Bank of China’s appointment of China Construction Bank as the UK’s first clearing bank for renminbi “ensures London is the base for the first clearing bank outside of Asia for the Chinese currency and ... should make it easier for UK companies use the Chinese currency.”

Paul Christopher, the managing partner of Mourant Ozannes’ Hong Kong office, says that his firm has been seeing a significant rise in requests to invest in real estate, particularly in the United Kingdom.

Considerations such as proven reputations for service, solid and secure banking networks and similarity to the UK legal system, Christopher notes, “will typically lead investors to Jersey, Guernsey, the Caymans or the British Virgin Islands for their real estate investments.”

The Isle of Man is progressively enticing a greater number of Chinese investments, as more and more companies and investors begin to make Mann their gateway to the UK and the greater EU for business, listings, IPOs and wealth and succession planning.

“The Isle of Man is unique in being the only offshore jurisdiction having full free trade access with the UK and EU, including its customs union, together with zero tax on company profits,”



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基建和可再生能源。“当然，”她补充道，“耿西岛基金也能用于流向中国的投资。”

根据张裕梅的说法，泽西岛在 2009 年引入了基金会，已经在亚洲多个市场受到了欢迎。

张裕梅也指出，中国人民银行指派中国建设银行作为英国首个人民币结算银行，“确保伦敦成为人民币在亚洲以外第一个结算银行的基地……也让英国公司可以更便捷地使用人民币”。

Mourant Ozannes 律师事务所香港办公室管理合伙人 Paul Christopher 提到，他们律所一直留意到投资房地产的需求有明显的增长，特别是在英国。

Christopher 提到，各种考虑因素，例如服务质量的口碑、坚实的银行网络以及与英国法律制度的相近，“都使泽西岛、耿西岛、开曼群岛或者英属维尔京群岛成为吸引房地产投资者的投资目的地。”

马恩岛吸引着越来越多的中国投资。越来越多的公司和投资者将其当作其进入英国和欧洲地区开展业务、上市、IPO 以及财富继承管理的门户。

“作为与英国和欧盟有完全自由贸易渠道的唯一离岸法域，而且还有关税联盟以及在公司收入方面的零税收政策，马恩岛是独一无二的，”Beevers 说。

Beevers 还补充道，马恩岛相对较大的面积更合适中国公司在欧洲多个时区进行实体业务。

## 投资非洲，甚至更远

作为中国投资进入非洲、欧洲以及中东的通道，迪拜的受欢迎程度也是有增无减。中国和迪拜之间的贸易额在 2014 年上升到 4760 亿美元，中国也超越印度成为迪拜的第一贸易伙伴。

“迪拜处于亚洲、欧洲和美国时区之间的战略地理位置对于很多商业领域都有明显的重要性，”众达律师事务所驻迪拜办公室合伙人 Eric Milne 说，“相较于其他离岸法域，迪拜世界级的超现代基础设施、便利的接触途径、优惠的税收架构以及对电子商务、

我们的制度清晰透明，是吸引……  
金融机构的其中一个亮点

*The clarity and transparency of  
our system is one of the main  
attractions to financial institutions*



**Essa Kazim**  
迪拜国际金融中心  
行政长官  
迪拜  
Dubai International  
Financial Centre  
Governor, Dubai

[良好声誉]使泽西岛、耿西岛、  
开曼群岛或者英属维尔京群岛成为  
吸引房地产投资者的投资目的地

*[Repute leads] investors to Jersey,  
Guernsey, the Caymans or the BVI for  
their real estate investments*



**Paul Christopher**  
Mourant Ozannes 律师  
事务所管理合伙人  
香港  
Managing Partner  
Mourant Ozannes  
Hong Kong

says Beevers, from the island's Department of Economic Development. He adds that the relatively large size of the island makes it suited to support a Chinese company's real, physical business presence within the European time zone.

## Investment into Africa and beyond

The popularity of Dubai as a conduit for Chinese investment into Africa, Europe and the Middle East continues to excel. Trade between China and Dubai rose to US\$47.6 billion in 2014, and China surpassed India as Dubai's top trade partner.

“Dubai's strategic geographical location between the time zones of Asia, Europe and the US is clearly of importance in many business sectors,” says Eric Milne, a partner with Jones Day in Dubai. “Its world class ultra-modern infrastructure, ease of access, beneficial taxation structure and its e-commerce and e-government focus provide Dubai with a number of advantages when compared to certain other offshore jurisdictions.”

He points out that a recent amendment of the UAE's Commercial Companies Law could also affect Chinese investors. While there remains a restriction of 49% on foreign ownership of Emirati companies, the law has several important changes, such as new company types and a higher level of corporate governance.

The Dubai International Financial Centre (DIFC) and its sole independent regulator, the Dubai Financial Service Authority (DFSA), are also widely considered leaders in implementing compliance policies, Milne adds.

“The clarity and transparency of our system is one of the main attractions to financial institutions that wish to operate in the region,” says Essa Kazim, governor of the DIFC. “Other benefits relating to tax exemptions, free flow of capital and profit repatriation provide additional incentives.”

Mauritius also serves as an attractive gateway for investment into Africa, as well as Asia and the rapidly developing market of India. “Mauritius combines the traditional benefits of an offshore financial centre with the distinct advantage of being a treaty-based jurisdiction,” says Lamb from Conyers.

“To a large extent, Chinese companies investing into jurisdictions in Africa would enter into agreements directly with stake-



电子政务的重视都为其带来众多的优势。”他提到，最近《阿联酋商业公司法》的修订同样对中国投资者有影响。虽然该法仍然将阿联酋公司的外国拥有权控制在49%以内，但是它也有多项重要的变化，例如新的公司形式以及更高层次的公司治理。

迪拜国际金融中心 (DIFC) 及其独立监管机构迪拜金融服务局都被广泛地认为是实施合规政策的领先者，Milne 补充说。

“我们的制度清晰、透明，是吸引想到这个区域运营的金融机构的其中一个亮点，”迪拜国际金融中心行政长官 Essa Kazim 说，“其他一些优点，包括税务豁免、自由资金流动以及汇回利润制度，也提供了更多诱因。”

对于投资非洲、亚洲以及新兴的印度，毛里求斯同样是一个热门路径。“毛里求斯结合了离岸金融中心的传统优势和作为以条约为基础的法域的明显优势，”林大维说。

“很大程度上，投资非洲法域的中国公司将可能在另一个法域直接和股东达成协议，”康德明律师事务所毛里求斯办事处主管 Stephen Scali 说。但是，Scali 提到，中国公司越来越欣赏毛里求斯的稳定优势，“我们已经为活跃在自然资源、油气、制造业和房地产等多个领域的中国公司提供法律服务”。

毛里求斯还有一个明显的文化联系——中国裔毛里求斯人占到了人口的2%，Scali 说：“同样值得注意的是，毛里求斯也一直被用来对中国进行投资。”

在太平洋地区，库克群岛最著名的是其信托立法，也吸引了很多中国公司和高净值人士登门。自从库克群岛制定了专属自保保险法规，中国对于这种替代性风险管理形式的兴趣陡然大增，库克群岛金融服务发展局首席执行官 Jennifer Davis 说。

“对于无论是个人计划还是公司需要，众多企业和高净值客户意识到尖端保险服务的价值并产生需求，”她说。“库克群岛上的专属自保保险法的特别之处在于为顾客提供灵活的保险计划。”

Davis 认为，随着中国和其他国家财富水平的增长，其国民对新增财富的美国式监管需求也在增长，这就导致了对于财富赠与和保护的需求也随之增长。

“库克群岛的法律顾问会与其客户的现有顾问紧密合作，创造一个符合客户本国监管制度的架构，同时又能让他们的子子孙孙有方法增长、保护并享受其成果。” ■

值得注意的是，毛里求斯也一直被用来对中国进行投资

*It is worth noting that Mauritius has also been used for inward investment into China*



”  
**Stephen Scali**  
康德明律师事务所  
办公室主任  
毛里求斯  
Head of Office  
Conyers Dill & Pearman  
Mauritius

holders in the other jurisdiction,” says Stephen Scali, Conyers’ head of office in Mauritius.

However, Scali notes increasing appreciation among Chinese companies of Mauritius’ stable advantages. “We have advised Chinese companies active in a broad variety of sectors, including natural resources, oil and gas, manufacturing and property.”

With a considerable cultural link – Sino-Mauritians make up around 2% of the population – Scali says that “it is worth noting that Mauritius has also been used for inward investment into China.”

### Pacific destination for trust

The Cook Islands are best known for their trust legislation, and have drawn many a Chinese company and high net worth individual to its shores. Chinese interest in captive insurance as an alternative form of risk management has skyrocketed since the Cook Islands began developing legislation on it, Jennifer Davis, CEO of Cook Islands Financial Services Development Authority, notes.

“Corporations and high net worth clients recognize the need for and value of sophisticated insurance services for both their personal planning and corporate needs,” she says. “The captive insurance legislation in the Cook Islands was specifically designed to provide flexibility in planning for clients.”

As levels of wealth rise in China and other countries, Davis says, so does the US-style oversight of their citizens’ newly acquired wealth, resulting in increased demand for wealth preservation and protection. “Cook Islands advisors work closely with their clients’ existing advisers to create a structure that meets the regulations of their home country while at the same time providing them with the means to grow, protect and enjoy the results of their successes for many generations to come.” ■

