



China Regulatory Updates

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- ▶ *Unique player in the PRC legal service market*
- ▶ *Simplicity, but always with a focus on key points and attention to details*

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增值税扩围试点细则出炉

Shanghai Office

Suite 1801, Tower I, Huayi Plaza
2020 West Zhongshan Road
Shanghai 200235, China
Tel: (86-21) 6083-9800
Fax: (86-21) 6083-9811

Beijing Office

Suite C203-5A
Lufthansa Centre Office Building
Beijing 100125, China
Tel: (86-10) 6410-5322
Fax: (86-10) 6410-5322

PRIVATE EQUITY / 私募股权投资

Tianjin Launches Pilot QFLP Program

天津发布 QFLP 新规

Following Shanghai, Beijing and Chongqing, Tianjin joined the pilot QFLP campaign with its recent issuance of the *Interim Measures for the Pilot Practice of Foreign Invested Equity Investment Enterprises and its Management Entities* and the detailed implementing rules thereto ("Tianjin QFLP Measures"), both of which have become effective by mid November 2011.

Compared with relevant rules issued by Shanghai and Beijing (*Chongqing has commenced its QFLP pilot practice without making written measures available to the public*), Tianjin QFLP Measures appear to be more comprehensive and have more detailed guidance in some aspects. We have listed below some major noteworthy points under the Tianjin QFLP Measures for your reference:

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| <p>(1) <u>No Limit on Foreign Investment Ratio</u>: Tianjin QFLP Measures have expressly provided that there is no limit on the capital investment ratio of foreign investors in a foreign invested private equity fund established under such pilot measures (while Beijing puts a ceiling limit of 50% on capital invested by foreign investors and Shanghai's measures are silent on this point).</p> <p>(2) <u>No Restriction on Investment</u>: Similar to Shanghai, Tianjin places no restriction on the private equity investments to be made by a pilot private equity fund (while Beijing requires its pilot funds to promise to predominantly invest in seven strategic emerging industries in Beijing).</p> <p>(3) <u>Minimum Fundraising Amount</u>: Tianjin QFLP Measures, as well as Beijing, require that a pilot private equity fund shall have a minimum fundraising amount of RMB500 million (approximately USD78.6 million) (while Shanghai only requires a minimum amount of USD15 million). Further, the paid-in capital of a pilot fund management entity shall not be less than RMB10 million or equivalent foreign currency under the Tianjin QFLP Measures (which comes very close to Shanghai and Beijing's USD2 million requirement).</p> <p>(4) <u>Qualifications of Foreign LPs</u>: Similar to Shanghai, Tianjin also sets some detailed eligibility requirements for a qualified foreign LP investor of a pilot private equity fund (while Beijing only provides some general requirements for qualified LPs). For example, Tianjin requires that each LP investor shall, among others, (i) have no less than USD500</p> | <p>日前, 天津市政府颁布了《关于本市开展外商投资股权投资企业及其管理机构试点工作的暂行办法》及其实施细则(以下简称“天津 QFLP 办法”), 目前已开始实施。至此, 上海、北京、天津、重庆四大直辖市均开始进行 QFLP 的相关试点(据悉, 重庆市没有正式出台相关文件, 但相关试点工作已经开始进行)。</p> <p>与上海和北京的试点办法相比, 天津 QFLP 办法在各主要方面规定地更为完善和细致。天津 QFLP 办法的一些主要内容简要介绍如下:</p> <p>(1) <u>内外资比例限制</u>: 天津 QFLP 办法明确规定了在外商投资股权投资基金中外资比例不受限制(而北京 QFLP 办法要求外资在股权投资基金中的比例不得超过 50%; 上海 QFLP 办法对此未作规定)。</p> <p>(2) <u>投资方向限制</u>: 与上海相同, 天津 QFLP 办法并未限制试点股权投资基金的投资方向(而北京 QFLP 办法则要求试点基金管理公司承诺其发起设立或管理的基金重点投资于北京市优先发展的七大战略性新兴产业)。</p> <p>(3) <u>最低募集规模</u>: 与北京相同, 天津 QFLP 办法要求股权投资基金的最低募集金额为人民币 5 亿元(约 7,860 万美元)(上海 QFLP 办法仅要求 1,500 万美元的最低募集金额)。另外, 天津 QFLP 办法要求基金管理机构的实收资本不得低于人民币 1,000 万元或等值外币(接近上海和北京 200 万美元的要求)。</p> <p>(4) <u>境外 LP 资格</u>: 与上海类似, 天津 QFLP 办法列明了申请试点的股权投资企业的境外出资人应具备特定条件, 例如投资人的自有资产规模不低于五亿美元或者其管理的资产规模不低于十亿</p> |
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million self-owned assets or USD1 billion managed assets; (ii) contribute at least USD10 million in the pilot private equity fund; and (iii) have more than 5 years' investment related experience.

- (5) **“National Treatment” of Equity Investment:** Tianjin has followed Shanghai's suit to allow a pilot private equity fund promoted by a foreign invested fund management entity to enjoy the “national treatment” of domestic private equity funds when the pilot fund makes equity investments within China (i.e., *such pilot fund will not be subject to any foreign investment restriction under PRC law*), provided that the capital contribution made to such pilot fund by such fund management entity through converting its self-owned foreign currencies shall not be more than 5% of the total paid-in capital of the pilot fund (while Beijing only sets the 5% ceiling capital contribution limit without mentioning whether this will affect the nature of the fund' investments).

美元、每个境外出资人至少在试点股权投资基金中出资 1,000 万美元以上、境外出资人应具有 5 年以上相关的投资经历等（北京 QFLP 办法对此则规定得比较笼统）。

- (5) **基金的内外资属性:** 与上海类似，天津 QFLP 办法规定了外商投资股权投资管理机构按照相关规定将外币结汇投入到其所发起设立的合伙制股权投资企业（上限为股权投资基金实际到账金额 5%），该部分出资不改变该等股权投资基金的原有属性（北京 QFLP 办法只规定了试点股权投资管理企业的外汇资金结汇上限为股权投资基金实际到账金额的 5%，但未提及该笔出资是否影响其所投资的股权投资基金的内外资属性）。

Securities Companies' Direct Investment Subject to More Stringent Isolation Requirements

券商被要求严格执行直投业务隔离

Securities Association of China (“SAC”) issued an implementing notice (“Notice”) on November 22, 2011 to further clarify certain provisions in the *Guidelines for the Regulation of Direct Investment of Securities Companies* (“Guidelines”) issued by CSRC on July 8, 2011. It is noteworthy that although SAC is only an industry association with a non-government nature, in practice, many regulations or rules formulated and suggested by it are generally complied with by securities companies and to some extent become a regulatory type of basis for CSRC's supervision and administration in relevant areas.

The Notice sets forth detailed requirements for “isolation between sponsor business and direct investment business” of a securities company. For example, both the Notice and the Guidelines require that where a securities company acts as the counseling agency, financial advisor, sponsor or lead underwriter of a company to be listed in the Chinese A-share market, from the date on which relevant service agreements are signed or relevant business are substantively carried out (whichever is earlier), any direct investment subsidiary of the securities company or any direct investment funds, industrial funds and fund management entities directly or indirectly subordinated to or managed by such direct investment subsidiary will no longer be allowed to invest in the to-be-listed company. The Notice further clarifies that the date on which the securities company convenes the first IPO coordination meeting among service providers of the to-be-listed company could be deemed as the date on which the relevant business has been “substantively carried out”. Moreover, the Notice provides that the direct investment subsidiary of a security company shall voluntarily promise a lockup period 6 months

中国证券业协会 (“SAC”) 于 2011 年 11 月 22 日发布了《关于落实〈证券公司直接投资业务监管指引〉有关要求的通知》 (“通知”)，对证监会在 2011 年 7 月 8 日发布的监管指引中的某些条款做了进一步说明。值得注意的是，尽管 SAC 只是行业自律组织，但其制定的很多规范在实践中通常被证券公司普遍遵守，并在一定程度上作为证监会的监管依据。

《通知》对监管指引中“保荐业务与直接投资业务相互隔离”的规定进一步细化，要求担任拟上市企业的辅导机构、财务顾问、保荐机构或主承销商的，应按照签订有关协议或者实质开展相关业务两个时点孰早的原则，在该时点后券商直投子公司及其下属直投基金、产业基金及基金管理机构的不得再对该拟上市企业进行投资。其中，券商召开拟上市企业 IPO 项目第一次中介机构协调会之日可以作为“实质开展相关业务”之日。另外，《通知》也要求券商承诺主动延长股份锁定期，即如果券商的直投子公司以自有资金或持有权益比例超过 30% 的直投基金、产业基金投资拟上市企业后，券商担任该企业保荐机构的，在严格执行现有股份锁定期期限要求基础上，直投子公司应承诺主动再延长股份锁定期不少于六个月。

longer than the period that is mandatorily required by the PRC law if the securities company will act as the sponsor of the company invested by its direct investment funds or industrial funds and the direct investment subsidiary holds more than 30% interests in such funds.

SECURITIES MARKET / 证券市场

Margin Trading and Securities Lending Business Subject to Routine Supervision; Securities Refinancing Rules Issued

融资融券从试点转向常规、转融通业务推出

CSRC recently promulgated the *Decision on Amending the "Administrative Measures on Pilot Margin Trading and Securities Lending Businesses of Securities Companies"* and the *Decision on Amending the "Internal Control Guidelines of Pilot Margin Trading and Securities Lending Businesses of Securities Companies"*; transferring the margin trading and securities lending businesses from pilot practice (started in March 2010) to routine operation.

CSRC amended the *Administrative Measures on Pilot Margin Trading and Securities Lending Businesses of Securities Companies* by, among others, lifting the eligibility requirements on securities companies proposed to engage in such businesses in the pilot stage (such as deleting the high net capital requirement and the A regulatory rating requirement), as well as deleting the word "pilot" in relevant provisions thereunder. *Internal Control Guidelines of Pilot Margin Trading and Securities Lending Businesses of Securities Companies* were amended accordingly.

On the same day, CSRC also released the *Administrative Measures on Pilot Securities Refinancing Business*, providing detailed rules of margin trading and securities refinancing (which refers to the new leverage trading mechanism that allows securities companies to borrow funds and stocks from the centralized securities financing body to support investors' margin trading and securities lending activities), such as relevant operation rules, function and structure of the centralized securities financing company, source of funds and securities, relevant administration and supervision rules, etc. The introduction of securities refinancing business will broaden the source of funds and securities for securities companies' margin trading and securities lending businesses and is interpreted as another milestone for shorting and margin financing businesses. Note that the centralized securities financing vehicle, China Securities Finance Co., Ltd., has finished its name pre-registration by central SAIC office lately with its reported registered capital of RMB6 billion (or USD940 million) and with its shareholders as Shanghai Stock Exchange, Shenzhen Stock Exchanges and China Securities Depository and Clearing Co Ltd.

中国证监会于近日发布了《关于修改〈证券公司融资融券业务试点管理办法〉的决定》和《关于修改〈证券公司融资融券业务试点内部控制指引〉的决定》，意味着证券公司的融资融券业务从试点（于2010年3月正式启动）转入常规。

在对《证券公司融资融券业务试点管理办法》的修改中，证监会取消了试点阶段对该项业务资格的较高净资本水平和分类评价结果等要求，并删除了原名称和条文中的“试点”字样。《证券公司融资融券业务试点内部控制指引》也作了相应修改。

此外，证监会于同日发布了《转融通业务监督管理试行办法》，对与转融通业务（即证券金融公司将自有或者依法筹集的资金和证券出借给证券公司，以供其办理融资融券业务的经营活动）相关的业务规则、证券金融公司的职责和组织架构、资金和证券来源、与转融通相关的证券权益处理、以及监督管理等事项进行了规定。此举将拓宽证券公司融资融券业务的资金和证券来源，被视为融资融券开闸以来第二个突破性进展。日前，转融通服务提供主体中国证券金融股份有限公司已获得国家工商总局的名称预核准，其拟定注册资本为60亿元人民币（约9.4亿美元），股东为沪深证券交易所及中国证券登记结算有限公司。

ChiNext Listed Companies Allowed to Offer Non-public Bonds

创业板上市公司再融资破题：发行定向公司债

CSRC recently made a public announcement and relevant explanatory replies which allow companies listed on the ChiNext board to make non-public offerings of corporate bonds (the "Rules"), kicking off the long discussed refinancing mechanism of ChiNext listed companies. According to the Rules, companies proposed to issue non-public bonds shall comply with the *Pilot Regulations on Issuance of Corporate Bonds* with respect to issuance requirements, procedures and other main aspects for such bond offerings, and shall follow relevant rules regulating non-public offerings in connection with such other aspects as number of investors and issuance methods (e.g., *the number of investors in a non-public bond offering shall not exceed 10*).

Since most ChiNext listed companies are newly listed companies and don't have much capital pressure, there might not be many companies that have a strong interest to make non-public offerings of corporate bonds for the time being. In addition, it is required under the Rules that the cumulative balance of the issued corporate bonds shall not exceed 40% of the net asset of the underlying company in the latest accounting period. Since most ChiNext listed companies' asset size are relatively small, apparently the foresaid 40% net asset threshold would limit the proceeds raised by a ChiNext listed company through a non-public bond offering to an unappealingly small size. Nevertheless, as companies listed on the ChiNext board grow bigger and become more mature, they are expected to play a more important role in the future bonds market.

日前，证监会发布公告，允许创业板上市公司申请非公开发行公司债券，讨论已久的创业板上市公司再融资制度自此破题。创业板公司非公开发行公司债券在发行条件、程序等主要事项上将执行《公司债券发行试点办法》的有关规定，在发行对象的数量、发行方式等方面则须参照非公开发行股票的有关规定（比如发行对象数量不超过10名）。

据悉，目前创业板公司大多上市不久，资金较充裕，目前有非公开发债意愿的创业板公司可能不会很多。另外，《公司债券发行试点办法》要求发行后公司债券累计余额不得超过最近一期末净资产总额的40%，而创业板上市公司的资产规模相对较小，因此发行额度受到一定的限制。但随着创业板企业的成长和壮大，创业板企业可能会成为未来债券市场的重要组成部分。

TAX / 税收

Detailed Rules on Pilot VAT Expansion Reform Issued

增值税扩围试点细则出炉

After State Council's approval of the pilot scheme of replacing business tax by value added tax or VAT in its executive meeting in Shanghai this October (*please refer to our November 2011 issue of China Regulatory Updates for details*), the Ministry of Finance and State Administration of Taxation have recently issued relevant detailed rules (namely the *Pilot Scheme for Replacing Business Tax by Value Added Tax, Implementing Measures on the Pilot Practice of Replacing Business Tax by Value Added Tax in Transportation Industry and Certain Modern Service Industries, Provisions on Relevant Issues of Pilot Practice of Replacing Business Tax by Value Added Tax in Transportation Industry and Certain Modern Service Industries and Provisions on the Transitional Policies for the Pilot Practice of Replacing Business Tax by Value Added Tax in Transportation Industry and Certain Modern Service Industries*) to address several concerns and requirements with respect to such pilot reform as proposed in the State Council's meeting. The pilot VAT expansion reform will start from January 1, 2012 at Shanghai (pilot places may be expanded as the reform goes deeper).

继国务院于2011年10月常务会议批准上海交通运输行业和部分现代服务业开展营业税改征增值税试点（*请参见本所2011年11月期《中国法律更新》*）后，财政部和国税总局于近日发布《营业税改征增值税试点方案》以及试点方案的相关实施细则（即《交通运输业和部分现代服务业营业税改征增值税试点实施办法》、《交通运输业和部分现代服务业营业税改征增值税试点有关事项的规定》和《交通运输业和部分现代服务业营业税改征增值税试点过渡政策的规定》），对此前国务院常务会议提出的几个试点要求进行细化。此次营业税改征增值税将自2012年1月1日起施行，以上海作为首个试点地区，并将根据具体情况扩大试点范围。

As the promotion and expansion of such pilot VAT reform in China, the existing Business Tax in certain industries will be eventually replaced by VAT, bringing an end to the current unreasonable co-existence of Business Tax and VAT and streamlining the turnover tax structure in PRC tax system. It is noteworthy that although the relevant authorities interpret that such pilot practice will help reduce relevant double taxation and the overall tax burden of the pilot enterprises won't increase, its effect on different industries may be disparate (e.g. *enterprises with lower profit rate and less increase in tax rate during the pilot scheme are more likely to benefit from such reform, and vice versa*).

Moreover, the Ministry of Finance and State Administration of Taxation have also adopted the decisions on amending the *Interim Regulations of the Value-added Tax* and the *Interim Regulations of Business Tax* to raise the tax-free thresholds of VAT and Business Tax respectively (e.g. *the VAT-free sales value of taxable services will be lifted from RMB1,500-3,000 per month to RMB5,000-20,000 per month, and the tax-free threshold for termly business tax will be raised from RMB1,000-5,000 per month to RMB5,000-3,000 per month*).

随着中国营业税改征增值税试点的推进与扩大，目前征收营业税的行业将逐步改为征收增值税，流转税中增值税与营业税并存的局面将结束，税制结构将趋于合理。值得注意的是，尽管相关部门在解释本次试点改革时表示本次试点有利于减少重复征税、且试点企业的总体税负应不增加或略有下降，但不同行业受到的影响可能有所不同（如利润率低、税率上调较少的企业获益的可能性较大，反之亦然）。

此外，财政部、国家税务总局于近日审议通过《关于修改〈增值税暂行条例〉和〈营业税暂行条例〉的决定》，上调增值税和营业税的起征点（比如销售应税劳务的增值税起征点提高至每月5,000-20,000元，此前为1,500-3,000元；按期缴纳的营业税起征点提高至每月5,000-20,000元，此前为1,000-5,000元）。

For further information, please write us at inquiry@hanyilaw.com.