



China Regulatory Updates

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Connotation of "Han Yi"

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

Our Values

- ▶ *Professionalism*
- ▶ *Cost Efficiency and Effectiveness*
- ▶ *Constant Self-Improvement Towards Perfection*



■ FOREIGN EXCHANGE / 外汇

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国务院进一步取消和调整部分行政审批项目

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FOREIGN EXCHANGE / 外汇

SAFE Simplified Forex Administration Procedures for FDIs

外管局简化 FDI 外汇管理程序

On November 21, 2012, the State Administration of Foreign Exchange or SAFE published the *Notice on Further Improvement and Adjustment of Foreign Exchange Policies Concerning Foreign Direct Investments* (the "Notice") to simplify forex administration procedures in order to further facilitate FDI activities. The Notice will take effect on December 17, 2012. Some of the highlights from the Notice include, among others:

2012年11月21日,外管局颁布了《关于进一步改进和调整直接投资外汇管理政策的通知》(“《通知》”),《通知》将于12月17日起实施。《通知》取消和调整了外管局对部分外商直投项目外汇管理的行政许可,为投资者和被投资企业省去了有关外汇手续的办理时间,从而有助于加速外商直投项目的推进。《通知》的要点包括:

- (a) Forex administration procedures for FDIs are significantly simplified and shortened: (i) Capital increase of FIEs or further investments by foreign investors with RMB funds legitimately obtained from previous onshore investments and capital increase in the form of registered FIE foreign debts will no longer require SAFE approvals. Capital verification inquiries and confirmations in such cases can be conducted by accounting firms pursuant to the forex registration information of the underlying companies directly. (ii) In terms of foreign-invested investment companies, quite a few approval or registration requirements (such as forex registration or capital verification inquiry and confirmation with SAFE offices as well as SAFE approval of fund allocations) in respect of their further onshore investments are lifted or otherwise simplified. In addition, based on the Notice, FIEs mainly engaged in investment activities (e.g., foreign-invested venture capital enterprises, foreign-invested enterprises for equity investments and etc.) will be treated as foreign-invested investment companies by SAFE offices so far as their forex administration is concerned, which makes the necessity of the pilot QFLPs more questionable to some foreign investors. So far as we know, it seems that the Notice is focused on simplification of SAFE administration procedures only and is not intended to challenge or break through any other exiting FDI or FIE administration practices though.
- (a) 简化了外国投资者境内再投资等外汇管理程序: (i) 取消了外管局对外国投资者以其境内合法所得转增注册资本和境内再投资以及外商投资企业以已登记外债转增注册资本的核准,会计师事务所可根据被投资企业外汇登记信息直接办理为其验资询证手续;及(ii)取消了外管局对外商投资性公司境内再投资的外汇登记和验资询证以及境内投资款划拨的核准手续等,并且在外汇管理方面将外商投资创业投资企业、外商投资股权投资企业等以投资为主要业务的外商投资企业视同外商投资性公司对待,这使得不少投资人对现有的QFLP制度在多大程度上还有存在的必要产生了疑问。就我们所知,从目前来看,外管局的上述《通知》只是简化了外汇管理流程,并未突破有关外商投资或外商投资企业的其他现有规定。
- (b) Extending offshore loans by onshore entities is further relaxed: The Notice reaffirmed that onshore PRC entities may extend loans to offshore entities with foreign currencies borrowed within mainland China. FIEs are now also allowed to lend money to their offshore parent companies (in addition to their offshore subsidiaries) within permitted quota.
- (b) 进一步放宽了对境内主体境外放款的限制: 再次明确境内主体可以以国内的外汇贷款对外放款,并允许外商投资企业在规定的额度内向其境外母公司放款。

CAPITAL MARKET / 资本市场

Capital Contributions in the Form of Scientific and Technological Achievements Encouraged by CSRC

证监会、科技部发文支持以科技成果出资入股确认股权

On November 15, 2012, the China Securities Regulatory Commission or CSRC and the Ministry of Science and Technology jointly published the *Guidance on Supporting of Recognition and Confirmation of Capital Contributions in the Form of Scientific and Technological Achievements* (the "Guidance").

The Guidance encourages companies to recognize and confirm the rights and interests of scientific and technological personnel in their scientific and technological achievements and their equity interests formed by capital contributions in the form of scientific and technological achievements. Companies and scientific research institutions located in the national independent innovation demonstration zones (such as Beijing Zhongguancun Science Park and Shanghai Zhangjiang Hi-Tech Park, among others) are encouraged to grant equity/stocks and dividends as incentives to scientific and technological personnel and management personnel who have made outstanding contributions to their companies and institutions and to recognize their rights as shareholders. It is however unclear that in practice whether the capital contributions in the form of scientific and technological achievements may encounter any challenges (e.g., whether the evaluation of such achievements is proper and justifiable) when being registered with local company registration offices.

In addition, CSRC indicated in the Guidance that it will no longer require any A-share listing candidate company which may have defects in the approval or registration procedures for capital contributions in the form of scientific and technological achievements to make up by submitting any additional confirmation letter to that effect, so long as the capital contributions in question only account for a small equity percentage in the candidate company which will not affect the stability of the controlling stakes in the company or invite any potential material risks, and the candidate company has made adequate disclosure in that regard and offered dispute resolution mechanisms for potential equity disputes.

2012年11月15日，证监会及科技部联合发布了《关于支持科技成果出资入股确认股权的指导意见》（“《指导意见》”），表明了其对以科技成果的形式出资入股企业的支持态度。

《指导意见》鼓励企业明确科技人员在科技成果中享有的权益，依法确认其股权，并明确支持北京中关村、上海张江等自主创新示范区内的企业和科研院所等对作出突出贡献的科技人员和经营管理人员实施股权和分红权激励，并依法确认其股权。但该类股权出资在进行工商登记确认时是否可能因评估作价等问题遇到障碍，恐怕还要看各地工商主管部门的经验和实践。

此外，证监会还在《指导意见》中表示，对于涉及科技成果出资入股的拟上市企业，如果企业在股权形成、演变过程中存在审批或备案程序上的瑕疵，但涉及的股权占比较低、不影响企业控制权稳定且没有重大风险隐患的，在其进行充分的信息披露并说明出现股权纠纷的解决机制的情况下，证监会将不再要求该等企业在上市前补办相关确认手续。

TAXATION / 税收

Individual Income Tax Rate on Dividends Received from Listed Companies Will Be Related to Holding Period of the Underlying Stock

对个人从上市公司取得的股息红利税，按持股时间实行差别化征税

On November 16, 2012, the Ministry of Finance, the State Administration of Taxation and CSRC jointly issued the *Notice on Certain Questions Concerning Implementation of Differentiated Individual Income Tax Policies of Taxation on Dividends from Listed Companies* to encourage long term investments. Pursuant to the notice, starting from January 1, 2013, for dividend income on stocks of listed companies held by individuals whether from public offerings or in the secondary market, the individual income tax (or IIT) rates will be differentiated and depended on how long the underlying stocks were held by the individuals, i.e.,

财政部、国税总局、证监会于2012年11月16日联合发布了《关于实施上市公司股息红利差别化个人所得税政策有关问题的通知》，鼓励个人投资者长线投资。根据该《通知》，自2013年1月1日起，对于个人从公开发行和二级市场上取得的上市公司股票，股息红利所得将按其持股时间的长短，实行差别化征收个人所得税的政策。即：持股超过1年的，个人所得税税负为5%；持股1个月

(i) where the holding period is more than one year, the IIT rate will be 5%; (ii) where the stocks were held less than one year (*inclusive*) but more than one month, the IIT rate will be 10%; and (iii) where the stocks were held less than one month (*inclusive*), the IIT rate will be 20%.

至1年的(含1年), 税负为10%; 持股1个月及以内的, 税负为20%。

ADMINISTRATIVE EXAMINATION AND APPROVAL / 行政审批

The State Council Further Lifted and Adjusted Certain Administrative Powers

国务院进一步取消和调整部分行政审批项目

The State Council has recently published the *Decisions to Cancel or Delegate Administrative Approval Authorities over Certain Matters for the 6th Round* (the "Decisions"). According to the Decisions, any matter that could be managed through afterwards supervision or indirect administration will no longer be subject to prior approvals. Some highlights involving capital market and foreign investments in the Decisions include:

国务院于2012年10月对外公布了《关于第六批取消和调整行政审批项目的决定》(“《决定》”), 明确了凡可采用事后监管和间接管理的事项, 一律不设前置审批的原则。其中, 涉及资本市场和外商投资方面被取消和调整的行政审批项目包括:

- **M&A and reorganization of listed companies:** Exemption of tender offers in some four circumstances and redemption of shares by listed companies will not be subject to CSRC's approval anymore. But the Decisions keep silent on whether the listed companies should file with CSRC in the aforesaid cases or only need to make information disclosures.
- **上市公司并购重组方面:** 取消了证监会对四种要约收购义务豁免及上市公司回购股份的核准。但该等核准取消后, 上市公司是否需要就前述事项向证监会备案, 或者只需要履行相应的信息披露手续, 尚待证监会进一步明确。
- **Foreign investments:** Pursuant to the Decisions, the central MOFCOM office has delegated its approval authorities over the establishment and change of certain types of FIEs to its local counterparts, including, among others, the approval of establishment and changes of foreign invested insurance brokerage companies, auction companies, equity or cooperative joint venture medical institutions and FIEs dedicatedly engaged in online sales business.
- **外商投资方面:** 部分外商投资企业设立、变更的审批权由商务部下放至省级商务主管部门, 包括外商投资保险经纪企业、拍卖企业、中外合资、合作医疗机构、专门从事网上销售的外商投资企业的设立及变更审批等。

In addition, the Decisions have adjusted approval requirements with respect to a few important industries. For example, IPO applications from for-profit Internet information service providers will no longer be subject to any separate prior approval by the Ministry of Industry and Information Technology. Instead, CSRC will seek its opinions on an as-needed basis when reviewing the applications. As a result, the approval process should arguably be shortened.

此外, 《决定》还调整了其他一些重要行业的审批项目, 比如取消了工业和信息化部对于经营性互联网信息服务提供者境内上市时单独的前置审查, 改为由证监会审批时征求工业和信息化部意见, 从而可能缩短审批时间。

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

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