



# China Regulatory Updates

July 2012

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国土资源部修订闲置土地处置办法

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## Financial Opening-Up Test Zone to Be Established in Qianhai, Shenzhen

### 国务院批准深圳前海新金融改革，拟建设金融业对外开放示范窗口

On June 27, 2012, the State Council promulgated the *Approval for Supporting Development and Opening-Up Policies of Shenzhen-Hong Kong Cooperation on Modern Service Industries in Qianhai Area* (the "Pilot Policy"), with an aim to support Qianhai Shenzhen-Hong Kong Modern Service Industry Cooperation Zone to implement various experimental policies, which are "more special" than policies adopted in special economic zones (such as Shenzhen and Zhuhai). The Pilot Policy, once put into practice, will greatly promote the internationalization process of RMB.

The most eye-catching part of the Pilot Policy lies in the innovation and reform concerning the financial industry, which, as interpreted by certain government officials, may serve as an important signal of China's gradual move to RMB capital account convertibility. Such financial innovations include, among others: (i) allowing Qianhai government to explore different channels encouraging RMB inflow to the Mainland China and construct a cross-boarder RMB business platform within the Cooperation Zone; (ii) supporting banks established in Qianhai to provide RMB loans to offshore projects, and investigating possibilities to allow Hong Kong banks to provide RMB loans to entities or projects in Qianhai under the CEPA framework; (iii) supporting eligible enterprises and financial institutions incorporated in Qianhai to issue bonds in Hong Kong within the quota approved by the State Council; and (iv) supporting foreign-invested private equity funds (including those with Hong Kong investors) to develop innovative ways in terms of capital settlement, investment and fund management. More detailed supporting rules with respect to the above will soon be formulated by NDRC, PBOC, CBRC, and CIRC, among others.

In addition, the Pilot Policy also provides relevant principles concerning reform of tax system in the service industry and cooperation in such fields as legal, education, medical treatment and telecommunications in Qianhai.

The implementation of the Pilot Policy is expected to be a systemic work, which has been divided into some 30 more detailed tasks (such as formulation of detailed rules and etc.) according to local officials in Qianhai. It is reported that a number of banks in Hong Kong have already kicked off some preparatory works involving the innovative RMB financing businesses by taking advantage of Shenzhen Qianhai's test zone.

2012年6月27日，国务院正式公布了《关于支持深圳前海深港现代服务业合作区开发开放有关政策的批复 国函》（“试点政策”），支持深圳前海深港现代服务业合作区实行“比经济特区更加特殊的先行先试政策”，加力助推人民币国际化进程。

《试点政策》的最主要内容体现在金融改革创新方面，其开放力度和创新空间之大均是目前同类政策中最引人注目的，部分政府官员将其解释为中国逐步实现人民币资本项目自由兑换的信号，具体包括但不限于：(i) 允许前海探索拓宽境外人民币资金回流渠道，构建跨境人民币业务创新试验区；(ii) 支持设立在前海的银行机构发放境外项目人民币贷款，并在CEPA框架下研究香港银行机构对设立在前海的企业或项目发放人民币贷款；(iii) 支持在前海注册、符合条件的企业和金融机构在国务院批准的额度范围内在香港发行人民币债券；以及(iv) 支持包括香港在内的外资股权投资基金创新发展，探索外资股权投资企业在资本金结汇、投资、基金管理等方面的新模式。上述政策的具体措施将分别由发展改革委、人民银行、银监会、证监会、保监会商有关方面按程序制定。

此外，《试点政策》对于在前海探索实行税制改革、在法律、教育、医疗和电信等领域的合作方面均作出了原则性的规定。

《试点政策》的具体实行将是一项系统工程。据悉，目前《试点政策》已被细化成30多项具体任务，由有关部门负责制定实施细则和进行必要的前期准备工作，目前也已经有一批港资银行着手研究利用“海港平台”开展人民币创新金融业务。

## China to Introduce Regulations on Unlisted Public Companies; VC/PE to Expect Diversified Exit Channels through "New Third Board"

### 证监会拟出台非上市公众公司监管办法、“新三板”扩容在即

On June 15, 2012, CSRC publicized on its website the draft

2012年6月15日，中国证监会发布了

*Measures for Supervision and Administration of Unlisted Public Companies* for public comments (the "Draft"), aiming to introduce fundamental regulations governing unlisted joint-stock companies with more than 200 shareholders or having their shares publicly traded (the "Unlisted Public Companies"). According to the Draft, if an Unlisted Public Company is expected to have more than 200 shareholders as a result of private placement of new shares or old shares, or existing shareholders of such company intend to publicly trade their shares, such company is generally required to obtain an approval from CSRC before it can initiate such activities (*note that under the current legal regime, only listed companies can have more than 200 shareholders and shares of companies other than listed ones are generally not allowed to trade publicly*). Compared with listed companies, CSRC's approval procedure applicable to Unlisted Public Companies is a much more simplified one (*no issuance committee review or sponsorship system is required*), and there is no financial threshold requirement for the issuance or trading of the shares of such Unlisted Public Companies. Once the Draft is finalized and takes effect, it is expected to significantly promote establishment and expansion of the over-the-counter market (or the so-called "New Third Board") across the country and may substantially solve the financing difficulties faced by micro, small and medium-sized companies (or SMCs) under China's current equity financing system. Meanwhile, VC and PE funds are also anticipating more investment opportunities in SMCs with more diversified exit channels.

It is noteworthy that the Draft currently confines qualified subscribers to new shares issued by Unlisted Public Company to shareholders, directors, supervisors and senior managers of the Unlisted Public Companies and a maximum of 35 other investors whose qualification requirements are to be decided by CSRC later on. Compare with the public investors of listed companies, investors of Unlisted Public Companies would primarily be institutions and individuals with more investment experience and higher risk tolerance.

The Draft also requires that the Unlisted Public Companies shall register and deposit their shares with China Securities Depository and Clearing Corporation Limited, and if their shareholders want to transfer their shares publicly, they should trade such shares in a legally established stock exchange center. It is also reported that CSRC is currently formulating relevant supporting rules for the Draft including, guidelines for articles of association of Unlisted Public Companies, information disclosure rules, administrative measures for share registration and deposit and administrative rules for eligible investors, among others.

《非上市公众公司监督管理办法（征求意见稿）》（“《意见稿》”），对股东人数超过 200 人或以公开方式转让股份的、不在沪深交易所上市的股份公司（“非上市公众公司”）的监管作出系统规范。根据《意见稿》，非上市公众公司定向发行新股或转让老股导致股东人数超过 200 人，或以公开方式转让老股（不论股东人数），需取得中国证监会的核准（目前，仅上市公司的股东人数可以超过 200 人）。与上市公司相比，证监会不会对非上市公众公司进行实质性审批（无发审委审核程序及保荐机制），且无任何盈利要求，信息披露要求也相对简单。市场预期，《意见稿》正式出台后，将有望实质性地改善中小微企业融资难的问题，并推动全国性场外市场（“新三板”）的扩容。同时 VC/PE 将获得更多投资中小微企业的机会和更加多元化的退出渠道。

值得注意的是，《意见稿》将认购非上市公众公司新股的对象限于公司股东，董事、监事、高级管理人员和不超过 35 名的其他符合投资者适当性管理规定的投资者（投资者适当性管理规定由中国证监会另行制定）。与沪、深交易所的上市公司以公众投资人为主相比，非上市公众公司的投资人将主要是风险承受能力比较高、专业性比较强的机构和个人投资者。

《意见稿》要求非上市公众公司股票在中国证券登记结算公司集中登记存管；股份以公开方式转让的，应当在依法设立的证券交易场所进行（据报道，“新三板”将可能为非上市公众公司提供股票公开转让服务）。此外，目前中国证监会正在制定公司章程指引、信息披露规则、登记托管办法、投资者适当性管理规定等配套规则。

## CSRC Moves to Lure More QFIIs

### 证监会多措并举进一步推动 QFII 发展

On June 20, 2012, CSRC promulgated a draft rule to modify the *Notice on Implementation of Administrative Measures on Onshore Securities Investment by Qualified Foreign Institutional Investors*

为进一步扩大资本市场对外开放，积极引入更多境外长期资金，2012 年 6 月 20 日，中国证监会发布相关征求意见



previously effectuated in 2006 (the "Draft") to solicit public comments, in the hope to attract more long-term offshore investors and to pursue deeper opening-up of the capital market in the Mainland China.

The Draft intends to ease QFII qualification requirements for certain foreign investors. For example, for QFII applicants who are asset management institutions, insurance companies and such other institutional investors as pension funds, sovereign wealth funds, their minimum operation period is decreased from 5 years to 2 years, and the required minimum value of assets under their management is significantly reduced from USD5 billion to USD500 million. In addition, the ceiling aggregate shareholding ratio of all foreign investors in a listed company is raised from 20% to 30% pursuant to the Draft, while the maximum shareholding of any single foreign investor in a listed company remains 10%. In addition, the Draft has expressly proposed to allow QFIIs to invest in inter-bank bond market.

Furthermore, the Draft has also tried to improve the convenience and flexibilities for QFIIs' operation in such ways as simplifying relevant application procedures, allowing a QFII to open securities accounts both for its own account and for its clients' accounts, and permitting a QFII to engage multiple securities companies, among others.

稿, 拟对 2006 年开始实施的《关于实施<合格境外机构投资者境内证券投资管理办法>有关问题的通知》进行修改 (“《修订稿》”).

《修订稿》降低了部分境外机构申请 QFII 的资格要求, 如资产管理机构、保险公司、其他机构投资者 (养老金、主权基金等) 的经营时间由 5 年降为 2 年, 其证券资产规模由 50 亿美元降为 5 亿美元。所有境外投资者通过 QFII 对单个上市公司 A 股的持股比例总和限制由 20% 放宽至到 30% (单个境外投资者持有一家上市公司股票的持股限制依旧为 10%)。此外, QFII 将被明文允许进入银行间债券市场。

在操作程序上, 《修改稿》简化了申请程序、并允许 QFII 为自有资金或管理的客户资金分别开立证券账户, 选择多个交易券商, 增加了交易的便利性。

## INDUSTRIAL POLICIES / 产业政策

### More Than A Dozen Governmental Departments Support Private Capitals in Monopolized Industries

#### 逾十部委密集发文鼓励民资进入垄断行业

Since the end of April 2012, more than a dozen central government departments, including, the Ministry of Transport, CSRC, SASAC, CBRC, NDRC, MOFOM, Ministry of Land and Resources, National Energy Administration, and CIRC, among others, have successively issued detailed rules and policies to implement the *Certain Opinions on Encouraging and Guiding the Healthy Development of Private Investments* (the "New Circular 36") issued by the State Council on May 13, 2010, in an effort to encourage non-government investments in industries traditionally monopolized by SOEs such as infrastructure, financial service, transportation, medical service, energy, telecommunication, electricity, logistics, municipal public utilities, among others.

Although most of the new rules only set forth general principles and failed to provide practical guidance, there are still some noteworthy points favoring non-government investments. For instance, the *Implementing Opinions on Encouraging and Guiding Private Capitals into the Banking Sector* (the "Opinions") issued by CBRC on May 26, 2012 is widely applauded by the market. According to such Opinions, non-government investment shall be equally treated with investments from SOE and government agencies and is explicitly allowed to enter into the banking industry without any special restrictions. Further note that the

从四月底开始, 交通部、证监会、国资委、银监会、发改委、商务部、国土资源部、国家能源局、保监会等十余部委纷纷发布相关文件, 落实国务院于 2010 年 5 月 13 日颁布的《国务院关于鼓励和引导民间投资健康发展若干意见》 ("新 36 条"), 支持民营资本进入相关传统垄断行业, 涉及基础设施、金融服务、交通、医疗、能源、电信、电力、物流、市政公用事业等多个领域。

从具体内容看来, 各部委的民资新政主要还是框架性文件, 大多数内容的实际可操作性并不强, 但也不乏亮点。比如, 银监会于 2012 年 5 月 26 日发布的《关于鼓励和引导民间资本进入银行业的实施意见》 ("意见") 很受市场欢迎。根据《意见》, 民营资本进入银行业与其他资本遵守同等条件, 不设特别限制; 村镇银行的主发起行的最低持股比例由 20% 降低到 15%, 让民间资本在

maximum shareholding requirement applicable to the major promoting bank in a rural bank is now lowered from 20% to 15%, which will give more initiatives to non-government investors to operate and manage rural banks. In the *Implementing Opinions on Encouraging and Guiding Non-Government Investment into the Logistics Industry* collectively issued by NDRC and other 11 central government departments, private enterprises would be given more government supports in terms of vehicle passage and land use right when they engage in the logistics industry. SAFE's new rules, in the meantime, are focusing on simplifying certain forex administrative matters concerning outbound investment by private companies.

It is widely commented by the media that the issuance of such a large volume of new policies not only reflected the government's efforts in implementing the New Circular 36, but also mirrored a practical need to adjust the country's economic growth model from an export-oriented one to one driven more by domestic demand. It is expected that promulgation of this round of new rules would in general help remove multiple restrictions over non-government investments under the current legal regime and gradually eclipse the monopoly status of SOEs in many industries.

村镇银行的经营管理中占有更大的主动权。此外，国家发改委等 12 个部门联合出台的《关于鼓励和引导民间投资进入物流领域的实施意见》则明确民企进入物流行业时在车辆通行、土地政策等方面可以获得重点扶持。国家外汇管理局的民资新政则强调简化民间资本境外投资的相关外汇监管程序。

评论认为，本轮的民资政策一方面是为了落实“新 36 条”的需要，但也是当前经济增速下滑的趋势下，“拉内需、调结构、稳增长”的经济大局需要。整体而言，落实“新 36 条”的配套实施细则的密集出台，对于加大放开民间资本投资限制、逐步打破国有资本在传统领域的垄断还是具有较大的意义，政府推动型投资向民间自主投资的转变有望进一步加快。

## LAND POLICIES / 土地政策

### MLR Amended Measures for Disposal of Idle Land

#### 国土资源部修订闲置土地处置办法

On June 1, 2012, the Ministry of Land and Resources (“MLR”) issued the newly amended *Measures for Disposal of Idle Land* (the “Measures”), which has come into effect on July 1, 2012. No substantive change has been made in the Measures compared with the precedent ones, yet the Measures have made certain procedures more clear and practical in a hope to facilitate revitalization of the inactive and unused land in the future.

The Measures have explicitly distinguished idle land caused by government authorities from such land with other causes. For idle land caused by government authorities, it can be disposed through more flexible ways based on negotiations with competent government authorities; for idle land caused by other reasons, it shall be dealt with strictly in accordance with the current rules (*i.e., the competent government agency is empowered to charge a fine up to 20% of the cost of land if the land is idle for one year, and to take back the land without compensation if it remains unused for two years*).

As to the specific procedures concerning disposal of idle land, the Measures introduced certain technical standards and more detailed procedures to help to determine the facts and causes of the idle land, and also streamlined administrative procedures governing collecting charges and land taking back right. Further,

2012 年 6 月 1 日，国土资源部发布了新修订的《闲置土地处置办法》（“《办法》”），并已于 2012 年 7 月 1 日起实施。尽管《办法》并未对此前的规定做出实质性的修订，但与修订前相比，《办法》对一些程序性事项进行了明确，并区分闲置行为是否因政府原因导致来决定闲置土地的具体处理方式，从而有助于盘活闲置土地。

《办法》明确区分了政府原因闲置的土地和其他闲置土地。对于因政府原因闲置的土地，增加与当事人协商的环节，并可选择多种灵活的处置方式；而对于其他闲置土地，则继续维持修订前的“闲置土地满一年按地价款 20% 征缴土地闲置费，闲置两年则无偿收回”的处置方式。

在具体程序上，《办法》增加了认定闲置土地具体标准和工作流程，以确定土地闲置的事实和原因；完善了征缴土地闲置费和无偿收回土地使用权的相关程序，并明确了开发商申请听证和复

the Measures also clarified that land developers are entitled to request for hearing, appealing and filing lawsuits against the relevant government authorities with respect to the disposal of idle land so as to make the Measures more sensible and practical in future practice.

议、诉讼的权利，使闲置土地的处置更具可操作性。

*For further information, please write us at [inquiry@hanyilaw.com](mailto:inquiry@hanyilaw.com).*

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