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"Intelligence and hard work are both critically important for a successful life. But it's the courage to innovate that will ultimately define how much we can achieve." - C. Sun

"People are easily falling in love with illusions created by themselves that are often nothing but a fantasy, just like a dream house which will only stay in the dreams." - J. Ren

"Our value appreciates every day as we grow up and when we still can't make a living. But as soon as we generate a positive cash flow, we all seem to quickly start to depreciate as we grow older on everyday basis just like a car!" - R. Xu

PE&VC / 私募股权及创业投资

CSRC to Administrate PE/VCs and NDRC to Be Focused on Policy-Making PE/VC监管权移交证监会 发改委负责宏观政策

In June 2013, the State Commission Office for Public Sector Reform (or SCOPSR, an administrative organ mainly responsible for China's administrative structure and institutional reform, as well as daily administration of organization staffing) issued the *Notice on Allocation of Administrative Authorities over Private Equity Funds* (the "Notice"), pursuant to which CSRC is now authorized to administrate and supervise PE and VC funds in accordance with the principles of moderate regulation and protecting legitimate interests of investors, while NDRC to organize promulgation of policies and measures (including those on PE/VC funding requirements) to encourage PE/VC developments. The Notice also requires CSRC and NDRC to establish coordination mechanisms and share information with each other.

It had been one of the administrative authorities of the financial department of NDRC to regulate PE funds. At the beginning of this century, NDRC started to formulate administrative measures for VC funds and was delegated the corresponding administrative powers by SCOPSR. With the development of the industry,

PE funds that adopted similar organizational structures of VC funds emerged in large numbers. NDRC had consequently rein in PE regulations and started to administrate PE registrations and filings.

The newly amended *Securities Investment Fund Law* that took effect on June 1, 2013 defines the legal status of private funds for the first time, and provides that the investment scope of private funds may include publicly issued stocks, bonds, fund units and other securities or derivatives prescribed by CSRC. This is widely believed to have reserved ample space for CSRC's later regulation of PE/VCs. The authority is now officially conferred by the Notice to CSRC which is expected to establish a specialized administrative section and issue directly relevant rules soon to execute its authority. It remains to be clarified by CSRC and/or NDRC however as to whether PE/VC funds will still need to be filed for records with NDRC or some other authority in the future.

2013年6月,中央机构编制委员会办公室(“中编办”,主要负责全国行政管理体制和机构改革以及机构编制的日常

管理工作)印发《关于私募股权基金管理职责分工的通知》(“《通知》”),重新确立了PE/VC的监管分工。根据《通知》,PE/VC的监管工作将由证监会负责,实行适度监管和保护投资者权益的原则;发改委则负责组织拟订促进PE/VC发展的政策措施,包括会同相关部门研究制定PE/VC的出资标准和规范。《通知》要求两部门建立协调配合机制,实现信息共享。

PE的管理一直以来是发改委金融司的职能之一。本世纪初,发改委开始着手制定VC的管理办法,中编办即将相关的管理职能赋予了发改委。随着行业的发展,与VC组织形式基本相同的PE大量出现,发改委也相应地介入到PE的监管中,开始主持PE的登记备案工作。

2013年6月1日起实施的新《证券投资基金法》首次明确了私募基金的法律地位,并规定私募基金的投资范围可以包括公开发行的股票、债券、基金份额及证监会规定的其他证券及其衍生品种,业界普遍认为这为证监会统一监管PE/VC留下了法律空间。现监管权正式划归证监会,据报道证监会将很快成立专门的私募基金监管处,并出台与公募基金管理办法相对应的私募基金管理办法。至于PE/VC是否还需要继续备案等问题,将有待证监会及/或发改委进一步明确。

CAPITAL MARKETS / 资本市场

The New Third Board to Be Adopted Nationwide “新三板”试点将扩大至全国

On June 19, 2013, the executive meeting of the State Council decided to expand the Small and Medium-sized Enterprise Stock Transfer System (usually referred to as the "New Third Board") from some four national high-tech parks in Beijing, Tianjin, Wuhan and Shanghai to the whole country.

The "Third Board Market" was originated from an intermediate share transfer system of securities companies since 2001 which dealt with share transfers of companies listed on the Securities Trading Automated Quotations System (or STAQ) and the National Exchange and Trading System (or NET) as well as companies delisted from the Mainboard. In 2006, the unlisted joint stock companies in Beijing Zhongguancun Science &

Technology Zone had also entered into such intermediate system for share transfers, and since then the system has started to be called the "New Third Board". In August 2012, CSRC initiated a pilot program that integrated unlisted joint stock companies in such other three national high-tech parks as Tianjin Binhai, Shanghai Zhangjiang and Hubei Donghu for share transfers on the New Third Board. In January 2013, the National Small and Medium-sized Enterprise Stock Transfer System has been formally launched in Beijing to provide a unified platform for the public share transfers of unlisted joint stock companies and the companies originally listed on STAQ/NET as well as companies delisted from the Mainboard, SME Board and

Growth Enterprise Board.

The New Third Board does not have stringent requirements for companies listed thereon in terms of financial performances, thus offers favorable opportunities for medium, small and micro-sized enterprises to enter into the capital market. Currently there are over 200 companies listed on the New Third Board. The proposed expansion of the New Third Board to incorporate companies outside of the pilot national high-tech zones is expected to further revitalize investments by private sector capitals. CSRC has reportedly started to formulate detailed implementing rules thereof.

2013年6月19日,国务院常务会议决定将中小企业股份转让系统(即“新三

板”)由北京、天津、武汉和上海四地国家级高新园区的试点扩大到全国。

“三板市场”源于2001年证券公司的代办股份转让业务，最早负责“两网”(即全国证券交易自动报价系统(STAQ)和中国证券交易系统(NET))挂牌公司及主板退市公司的股份转让。2006年，北京中关村科技园内的非上市股份公司进入该“代办股份转让系统”进行股份转让，“新三

板”的称谓就此产生。2012年8月，证监会启动首批扩大非上市公司股份转让的试点工作，试点园区在北京中关村园区的基础上，新增了天津滨海、上海张江及武汉东湖3个国家级高新区。2013年1月，全国中小企业股份转让系统在北京正式挂牌成立，为非上市公司股份的公开转让及原两网挂牌公司和主板、中小板及创业板退市公司的股份转让提供了一个统一的平台。

“新三板”对挂牌公司没有硬性的财务指标要求，为中小微企业提供了较好的融资机会。目前在新三板挂牌的公司已经超过200家。本次试点范围的进一步扩大，将使得上文提到的四个地区之外的非上市股份公司也可以申请在新三板挂牌，有利于进一步激活民间投资。据悉，证监会已在研究制订扩大试点的具体方案。

INSURANCE / 保险

Insurance Companies Allowed to Invest in FMCs 保险机构获准投资基金管理公司 监管协作进入新阶段

Pursuant to the amended *Securities Investment Fund Law* in 2013, the principal shareholders of securities investment fund management companies (or FMC for short) are no longer restricted to financial institutions engaged in securities transactions, securities investment consultancy or management of trust assets, which allows all other qualified entities to apply for investments in FMCs through greenfield investments or by M&As. To promote and regulate investments by insurance institutions in FMCs, CSRC and CIRC recently promulgated the *Pilot Measures on Investments in FMCs by Insurance Institutions* (the “Pilot Measures”), which became effective on June 18, 2013, shortly after issuance.

The Pilot Measures set forth such provisions as application procedures and risk control requirements for insurance institutions in application for establishing FMCs, pursuant to which: (i) insurance companies, insurance group (holding) companies, insurance assets management companies and other types of insurance institutions may apply for setting up an FMC; (ii) in terms of governmental review and approval process, CIRC is empowered to conduct a preview from the

perspective of risk prevention for investments by insurance funds and issue regulatory notes first, while CSRC will take a further review and conclude the underlying application, in which process CIRC and CSRC are required to develop cross-industry supervision cooperation and share information; and (iii) in terms of management and operations, insurance institutions and their FMC subsidiaries are required to ensure FMC's independency by strictly following the principle of “separation of legal persons” and to establish a “Chinese Wall” for risk isolation in the aspects of business, personnel, work spaces, accounting books and information, among others.

Additionally, the *Interim Provisions of Administration on Sales of Securities Investment Funds by Insurance Institutions* promulgated by CSRC and CIRC has come into force in early June, 2013, pursuant to which qualified insurance institutions may apply for permits to sell securities investment funds. CSRC is required to consult with CIRC before issuing such a permit.

2013年6月1日起正式实施的新《证券投资基金法》不再将基金管理公司主要

股东的范围限定为从事证券经营、证券投资咨询、信托资产管理等业务的金融机构，符合条件的其他机构经批准亦可以新设或并购的方式设立基金管理公司。2013年6月7日，证监会与保监会联合发布了《保险机构投资设立基金管理公司试点办法》(“《试点办法》”，已于2013年6月18日起实施)，共同推进和规范保险机构投资基金管理公司。

《试点办法》主要从保险机构投资设立基金管理公司的申请程序、风险控制等方面进行了规定。根据《试点办法》，(i)主体方面，可以申请设立基金管理公司的保险机构类型包括保险公司、保险集团(控股)公司、保险资产管理公司和其他保险机构；(ii)审批方面，先由保监会从保险资金投资风险防范的角度进行审查并出具监管意见，再由证监会进行审核，两会将就地进行跨行业监管合作及信息共享；(iii)经营管理方面，保险机构与基金管理公司被要求严格按照“法人分业”的原则，保证基金管理公司的独立法人地位，并建立风险隔离制度，包括但不限于业务、人员、场地、账簿及信息的分离。

此外，《保险机构销售证券投资基金管理暂行规定》亦已实施，符合条件条件的保险机构将可以申请基金销售的资格。证监会在审核保险机构基金销售业务资格时将征求保监会的意见。

Foreign Insurance Companies May Use RMB to Invest in China 外国保险公司将可以使用人民币进行境内投资

On June 8, 2013, the State Council publicized its *Decision on Revising “PRC Regulations on Administration of Foreign-Invested Insurance Companies”*. Starting from August 1, 2013, in addition to freely convertible currencies, foreign insurance companies will be allowed to use their

legal RMB incomes to make capital injections to their insurance joint venture or wholly-owned subsidiaries in China, or allocate working capitals to their Chinese branch offices.

2013年6月8日，国务院发布《关于修改〈中华人民共和国外资保险公司管理

条例〉的决定》。本次修订取消了外国保险公司在向中国境内的外资保险公司(包括中外合资及外商独资)出资及向其中国境内分公司无偿拨付营运资金时必须使用可自由兑换货币的要求，自2013年8月1日起，外国保险公司将可以使用其合法取得的人民币资金进行上述出资和资金拨付。

ENVIRONMENTAL PROTECTION / 环保**The Supreme People's Court and Supreme People's Procuratorate Issued Judicial Interpretations on Criminal Violations of Environmental Laws****两高出台有关环境污染刑事案件的司法解释**

On June 17, 2013, the Supreme People's Court and the Supreme People's Procuratorate of the PRC jointly promulgated the *Interpretations on Several Issues Concerning the Application of Law in Handling Criminal Cases of Environmental Pollutions* (the "Interpretations") and some four typical criminal offense cases in connection with environmental pollutions. The Interpretations have become effective since June 19, 2013.

The Interpretations clarified criteria for convicting criminal violations in terms of environmental pollution, which include, among others, the scope of "toxic substances", circumstances of "seriously polluting the environment" and elements to distinguish environmental pollution crimes. It is noteworthy that according to the Interpretations, a person would be deemed an accomplice of the underlying criminal violations if he/she, knowing that a third party does not have an appropriate license to handle hazardous wastes, engages a third party to collect, store, use and/or otherwise dispose of hazardous wastes or provides such wastes to

such third party and thus causes serious pollutions to the environment. This means that engaging unqualified service providers to deal with hazardous wastes may also subject a person or a business to criminal liabilities.

Facing increasingly stringent regulations and supervisions from PRC government authorities and judicial enforcement agencies on environmental pollutions, it is prudent and advisable for investors to set a higher standard for environmental protection matters when doing business in China going forward. Specifically, if its proposed investment will likely involve such environmental unfriendly industries as chemicals, mining, medical and pharmaceuticals, the investor should better consider engaging an environmental expert to conduct a dedicated environmental due diligence depending on specific circumstances of each deal of course and clearly cutting off all potential legal risks and liabilities associated with all pre-closing/historic environmental pollutions under the transaction documents to effectively protect the investor's legitimate interest.

2013年6月17日，最高人民法院和最高人民检察院（“两高”）公布了《关于办理环境污染刑事案件适用法律若干问题的解释》（“《解释》”）以及四起典型的环境污染犯罪案例。《解释》已于2013年6月19日实施。

《解释》对环境污染刑事案件的相关定罪量刑标准进行了明确和规范，比如界定了“有毒物质”的范围、构成“严重污染环境”的情形及环境污染相关罪名入罪要件的认定标准等。其中值得注意的包括，根据《解释》，在明知他人无经营许可证或超出经营许可范围的情况下，向其提供或者委托其收集、贮存、利用、处置危险废物且严重污染环境的，将构成污染环境罪的共同犯罪。这意味着企业如果在经营过程中违规处置危险废物，将有可能被追究刑事责任。

面对中国政府及司法机关对环境污染问题的日渐重视，投资人在中国进行投资时，将需要对目标企业或项目环保方面的合规事宜给予更多的关注，尤其是当其投资涉及环保敏感行业（比如化工、矿业、医药等）时，可能需要根据具体的情况考虑聘请相关领域的专家进行专门的环保尽职调查，并在交易文件中对环保方面的风险和责任进行适当的划分，以更好地保护自身的利益。

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