



# China Regulatory Updates

March 2013

## 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



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国务院拟取消外籍个人个税优惠

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## FOREIGN EXCHANGE / 外汇

## SAFE Simplified Forex Procedures for Offshore IPOs of Onshore Enterprises

## 外管局简化企业境外上市外汇管理程序

Following the notice issued by China Securities Regulatory Commission (or CSRC) at the end of 2012 which has lowered thresholds for overseas IPOs of onshore entities (please refer to our January 2013 issue of China Regulatory Update for details), the PRC State Administration of Foreign Exchange (or SAFE) recently promulgated the *Circular on Certain Issues Concerning Foreign Exchange Administration for Overseas Listings*. This Circular significantly simplified forex settlement formalities for overseas IPOs of onshore companies, and further standardized forex settlement procedures for share redemption by onshore companies whose shares are listed on offshore stock exchanges and changes of the onshore shareholders' positions in the offshore listed companies.

继中国证监会于 2012 年年底发文降低境内企业在境外发行上市的门槛后（相关介绍请参见本所 2013 年 1 月期《中国法律更新》），外管局于 2013 年 1 月 28 日发布了《国家外汇管理局关于境外上市外汇管理有关问题的通知》（“《通知》”），自发布之日起实施。《通知》大幅度简化了境内公司办理境外上市时的外汇手续，并进一步规范了境内公司回购境外股票及其境内股东增持或减持境外股份时的外汇手续。

## SECURITIES / 证券

## Management of Publicly-Raised Securities Investment Funds Opened up to Qualified Asset Management Institutions

## 公募证券投资基金扩容

On February 18, 2013, CSRC promulgated the *Interim Provisions on Management of Publicly-Raised Securities Investment Funds by Asset Management Institutions* (the “Interim Provisions”). After the Interim Provisions becomes effective since June 1, 2013, qualified securities companies, insurance asset management companies, management institutions for privately-raised securities investment funds and other qualified asset management institutions will be allowed to manage publicly-raised securities investment funds.

Compared to the draft, the Interim Provisions somehow lowered certain qualification requirements for securities companies, insurance asset management companies and management institutions for privately-raised securities investment funds (e.g., *profitability in recent consecutive 3 years is no longer a condition precedent for them to be engaged in fund management business*) which intend to manage publicly-raised securities investment funds. In addition, the Interim Provisions also allows qualified equity investment or venture capital investment management institutions and other asset management institutions to manage publicly-raised securities investment funds.

2013 年 2 月 18 日，证监会正式发布了《资产管理机构开展公募证券投资基金管理业务暂行规定》（“《暂行规定》”）。该规定自 2013 年 6 月 1 日起施行后，公募基金业将正式向证券公司、保险资产管理公司、私募证券投资基金管理机构等其他合格资产管理机构开放。

与此前公布的征求意见稿相比，《暂行规定》适当降低了证券公司、保险资产管理公司和私募证券投资基金管理机构直接开展公募基金管理业务的门槛（比如取消了三类机构最近 3 年需连续盈利的要求），并允许符合条件的股权投资管理机构、创业投资管理机构等其他资产管理机构比照《暂行规定》申请开展公募基金管理业务。

## LABOR LAW / 劳动法

## The Supreme Court Released Further Interpretations on Labor Disputes

### 最高法院再次出台有关劳动争议案件审理的司法解释

Starting from February 1, 2013, the *Interpretations of the Supreme People's Court on Several Issues Concerning Application of Law for Hearing Labor Disputes (IV)* (the "Interpretations") become effective. The Interpretations clarified such labor law issues as the legal effect of labor arbitration awards, calculation of employees' service terms, implementation of non-competition provisions, effectiveness of verbal revisions to labor contracts, termination of labor contract without notifying trade union, dealing with foreign-related labor relations, and etc. Some highlights of the Interpretations include:

- Calculation of employees' service terms is further clarified:** Pursuant to the Interpretations, where an employee is transferred from one employer to another for reasons not attributable to the employee himself/herself (e.g., as a result of merger/division of the employer, being seconded by former employer to other entity, being employed by the employer and its affiliates in turns and etc.), he/she could claim that both his/her service term with the former employer and that with the current employer should be counted together when calculating severance compensation package applicable to him/her.
- Non-competition rules are further specified:** (i) If no specific non-compete compensation amount has ever been agreed by and between the employer and the employee, the employee will at least be entitled to a monthly payment that equals to the higher amount of (A) 30% of his/her average monthly salary payment in the last 12 months prior to the termination of his/her employment relationship with the employer or (B) the minimum level of monthly salary provided by local government authorities; (ii) The employer or the employee may terminate the non-compete arrangement unilaterally under certain circumstances (for example, if an employer is willing to pay a 3-month additional compensation to the employee, the employer can terminate the non-compete arrangement unilaterally, or the employee may terminate the non-compete arrangement unilaterally, if the employer fails to pay the compensation amount for 3 months; and (iii) If an employee breaches the non-compete agreement, in addition to paying liquidated damages to the employer, he/she shall rectify such violation by continuing to fulfill his/her non-compete obligations.
- 明确了非因劳动者原因变更工作单位时工作年限的计算问题:** 根据《解释四》，非因劳动者原因变更工作单位（包括用人单位分立、合并，对劳动者进行工作调动，通过关联企业轮流与劳动者订立劳动合同等），劳动者可以主张将原用人单位的工作年限合并计算为新用人单位的工作年限，并以此为基础计算经济补偿或赔偿金的具体数额。
- 完善了竞业限制的有关规定：** (i) 如果用人单位和劳动者未约定竞业限制补偿金的具体金额，则劳动者有权按其劳动合同解除或终止前十二个月平均工资的 30% 且不低于劳动合同履行地最低工资标准，按月获得经济补偿；(ii) 用人单位和劳动者在满足一定条件下均可单方面解除竞业限制的约定（比如用人单位在额外支付三个月竞业限制补偿金的前提下，可以随时单方面解除竞业限制协议；因用人单位的原因导致三个月未支付经济补偿金的，劳动者有权单方面解除竞业限制约定）；以及(iii) 劳动者如果违反了竞业限制约定，除向用人单位支付违约金外，仍应继续履行不竞争义务。

## GENERAL CORPORATE / 一般公司事务

### Shenzhen and Zhuhai Launched Pilot Schemes to Simplify SAIC Registration Procedures

#### 深圳、珠海试点新规 大幅简化商事主体登记手续

Effective from March 1, 2013, SAIC registration procedures and requirements for commercial entities (*including natural persons*,

2013 年 3 月 1 日起，深圳、珠海启动商事登记制度改革试点，两地商事主体

legal persons and other organizational institutions engaged in for-profit businesses such as corporations, partnerships and individually-owned business) will be substantially simplified in Shenzhen and Zhuhai, two Special Economic Zones of China.

Highlights in this round of pilot reforms include, among others, that in respect of limited liability companies, only the total amount of capital subscribed by their shareholders is required to be registered with the local offices of the State Administration for Industry and Commerce (or SAIC) in Zhuhai or Shenzhen and the companies may decide at their sole discretion on whether to file the capital amount actually injected by their shareholder(s) with local SAIC offices later on (*note that filing of the paid-in capital amount with local SAIC office was a compulsory requirement in Shenzhen and Zhuhai previously*). In addition, according to the newly adopted template business license, the business scope of a commercial entity will no longer be recorded thereon. Instead, it will be provided in such entity's constitutional documents (such as articles of association, partnership agreement and etc.), and the general public may search for such information on such public information platforms as the register books produced and maintained by the local SAIC offices. Although the principles and major changes under the pilot schemes adopted by Shenzhen and Zhuhai are sustainably the same, there do exist different practices and requirements when implementing the pilot rules in these two areas (e.g., name pre-registration is an optional process in Zhuhai, but it is a must-to-have item in Shenzhen). Interested investors will need to consult with local SAIC offices for detailed registration procedures and requirements before registering a commercial entity under the pilot rules.

Furthermore, it is noteworthy that the above-mentioned pilot schemes also apply to foreign-invested enterprises and such other commercial entities as banks and securities companies, the establishment of which requires prior approvals of other government authorities. It is reported that these pilot reforms might be further implemented in other cities of Guangdong province in the near future.

(包括公司、合伙企业、个体工商户等以营利为目的从事经营活动的自然人、法人和其他经济组织)的工商登记手续将大幅简化。

此次试点改革的最大亮点在于有限责任公司开始实行注册资本认缴登记制度,即,登记机关只强制登记全体股东认缴的注册资本总额,而由公司自行决定是否申请实收资本备案。此外,两地新版的营业执照上将不再记载公司的经营范围,商事主体的经营范围由章程、协议等文件确定,公众可以通过工商局置备的商事登记簿等信息公示平台查询。当然,两地的具体规定略有不同,比如在珠海,是否申请名称预先核准也将由申请人自行选择决定。

上述新规同样适用于在深圳或珠海设立的外商投资企业或银行、证券公司等需要取得政府前置审批或许可的商事主体。另外,该项改革试点据报道也将在广东省其他城市逐步推广。

## TAXATION / 税收

### Tax Preference on Dividend Payment to Foreign Individuals May Be Cancelled

#### 国务院拟取消外籍个人个税优惠

The PRC State Council recently circulated the *Notice on Several Opinions Concerning Deepening Reform of Income Distribution System* (the "Notice") jointly promulgated by three central government ministers. Pursuant to this Notice, exemption of individual income tax (or IIT) on dividends received by foreign individuals from foreign-invested enterprises is planned to be eliminated and a 20% IIT rate might be imposed instead. Implementing rules in this connection are expected to be issued by the Ministry of Finance and the State Administration of Taxation soon.

近日,国务院转发了发改委等三部门制定的《关于深化收入分配制度改革若干意见的通知》,拟取消外籍个人目前享受的、从外商投资企业取得的股息、红利所得免征个人所得税的优惠政策。依照以往惯例,财政部及国家税务总局不久将会出台相应的规定,落实国务院的通知。该等税收优惠取消后,外籍个人自外商投资企业取得的股息、红利可能需要按 20% 的税率缴纳个人所得税。

In view of the potential policy change, interested foreign individuals may need to explore alternative ways for the purpose of their China tax planning.

由于上述税收政策的改变将导致外籍个人直接持有外商投资企业股份失去现有的财税优势，外籍个人可能需要通过其他税收筹划以降低税务成本。

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

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