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## M&A / 并购

### CIRC Issued New Rules on M&A Involving Insurance Companies 保监会出台保险公司并购新规

On April 8, 2014, the China Insurance Regulator Commission ("CIRC") officially issued the *Administrative Measures on M&As Involving Insurance Companies* (the "Measures"), which will come into effect on June 1, 2014.

The Measures is applicable to M&As of PRC domestic insurance companies, exclusive of equity investments in PRC non-insurance companies or investment in foreign insurance companies by PRC domestic insurance companies. In order to further encourage various high-quality domestic and foreign capitals to invest in insurance companies, the Measures relax or even remove several restrictions stipulated in the *Administrative Measures on Equities of Insurance Companies* effective in 2010 and other relevant rules. The relaxations in the Measures mainly include, among others, (i) subject to CIRC's approval, buyers may borrow a M&A loan up to 50% of the monetary consideration involved in an M&A deal; (ii) subject to CIRC's approval, an investor does not need to wait for 3 years to increase its shareholding ratio in an insurance company to a level of more than 20%; and (iii) horizontal acquisitions are no longer prohibited and subject to CIRC's approval, an investor will be allowed to control two

insurance companies engaging in same business line. It is noteworthy that pursuant to the Measures, as for M&As of domestic insurance companies by foreign investors, if the accumulative shareholding ratio of all foreign shareholders in an insurance company exceeds 25%, the foreign investors will further be required to meet the qualifications applicable to foreign insurance companies stipulated in the *Administrative Regulations on Foreign-Invested Insurance Companies* (including, among others, having operated in insurance sector for over 30 years, having set up a PRC representative office for more than 2 years and having a total assets of no less than USD5 billion at the end of the past year).

To secure the stability of the transactions involved, the Measures also set some restrictions on behaviors of investors and investee insurance companies during the transitional period from the signing of M&A agreement to the completion of the relevant equity/share registration and lock-up periods against the investors.

2014年4月8日, 保监会发布了《保险公司收购合并管理办法》(“《并购办法》”), 并将于2014年6月1日正式施行。

《并购办法》仅适用于目标公司为境内保险公司的并购行为, 不包括保险公司对非保险公司或境外保险机构的股权投资。以进一步鼓励境内外各类优质资本投资保险业为目的, 《并购办法》解除了2010年实施的《保险公司股权管理办法》及其相关文件中的部分限制性规定, 具体包括: (i) 在取得保监会批准的情况下, 允许投资人采取并购贷款等融资方式, 规模上限为货币对价总额的50%; (ii) 在取得保监会批准的情况下, 投资人对保险公司持股超过20%可不适用对该保险公司的三年投资年限的要求; (iii) 在取得保监会批准的情况下, 不再禁止同业收购, 投资人可以在收购完成后控制两个经营同类业务的保险公司。值得注意的是, 根据《并购办法》, 就外国投资者收购合并境内保险公司而言, 如果交易完成后外资股东出资或者持股比例占保险公司注册资本超过25%, 外国投资者仍应满足《外资保险公司管理条例》中对外国保险公司的资质要求(包括但不限于经营保险业务30年以上、在中国境内已经设立代表机构2年以上、提出设立申请前1年年末总资产不少于50亿美元等)。

另外, 为维护保险市场公平秩序, 《并购办法》对签署并购协议至股权变更登记之间的过渡期内投资人和被投资保险公司的行为进行限制, 并设定了投资人完成收购后的限售期。

## OUTBOUND INVESTMENT / 境外投资

### NDRC Further Cut Approval Requirements for Outbound Investment Projects 发改委缩小境外投资项目核准范围 扩大备案制适用

In early April, the National Development and Reform Commission ("NDRC") issued the *Administrative Measures for Approval and Filing of Overseas Investment Projects* (the "Measures"), which will be implemented from May 8, 2014. According to the Measures, overseas investment projects with the Chinese party's investment amount less than US\$1 billion will only be required to be filed with NDRC as long as the investments will not be made in sensitive regions and nor will they involve sensitive industries. This also means that the scope of overseas investment projects subject to NDRC's approvals is further narrowed down. The Measures for the first timely clarify the differences between the filing and

approval processes for overseas investments in terms of the procedures, contents and timing and clearly set out the time limit for the consulting firms as delegated by NDRC to issue relevant assessment reports during the approval process. All the foresaid make the filing and approval processes more transparent and will, more or less, help the investors to have a better estimation as to how long the approval or filing processes will take while making investment initiatives in the future.

It is noteworthy that, according to the Measures, any overseas investment made in sensitive industries shall be approved by NDRC. However, except for setting out a list of some sample

industries for illustration purpose, the Measures didn't provide a detailed list of "sensitive industries", which to some extent will leave uncertainty to certain overseas investment projects as to whether they are subject to a filing or an approval process.

2014年4月上旬, 国家发展和改革委员会(“发改委”)正式发布《境外投资项目核准和备案管理办法》(“《办法》”), 并将于今年5月8日起正式实施。根据《办法》, 发改委缩小了境外投资项目的核准范围, 规定中方投资10亿美元以下的、位于非敏感地区且不涉及敏感行业的项目, 统一实行备案制。

《办法》还对备案的程序、内容、办理时限等作出明确规定, 有利于避免此前在部分地区存在的以备案的名义变相审批的现象, 并首次规定了在项目核准环

节中、发改委所委托的咨询机构出具评估报告的时限，从而使投资者能够更准确地把握完成核准程序的时间。

需要注意的是，《办法》规定，涉及敏感行业的境外投资项目不分限额，均由发改委核准，但却没有明确“敏感行业”的具体定义，而只是概括性地列举

了部分行业的名称，这将可能导致某些项目在核准制或备案制的适用上的不确定性。

## CAPITAL MARKET / 资本市场

### Shanghai and Hong Kong Cross-Border Stock Trading Plan Established

#### 内地与香港两地实施沪港通

On April 10, 2014, the China Securities Regulatory Commission and the Securities and Futures Commission of Hong Kong issued a *Joint Announcement* (the “Announcement”), approving the Shanghai Stock Exchange, the Stock Exchange of Hong Kong Ltd., and Clearing Companies of both sides to initiate a pilot program to establish a mutual stock market access between Mainland China and Hong Kong (i.e.,

Shanghai-Hong Kong Stock Connect, the “Stock Connect”), which is expected to be formally launched in October 2014. Note that, at this initial stage, only qualified investors are allowed to trade on both Shanghai and Hong Kong stock exchanges with respect to the permitted shares within the approved quotas.

2014年4月10日，中国证券监督管理委员会与香港证券及期货事务监察委员会

发布《联合公告》（“《公告》”），原则批准上海证券交易所与香港联合交易所及两地结算机构共同开展沪港股票市场交易互联互通机制试点（“沪港通”），并预计将于2014年10月正式启动。根据《公告》，内地和香港投资者将可以委托当地证券公司，买卖对方交易所上市的股票。但在试点初期阶段，被投资股票范围、投资额度和投资者准入门槛均受到限制。

## TAXATION / 税收

### Preferential Tax Treatments Available to Certain Industries in Qianhai, Hengqin and Pingtan

#### 前海、横琴、平潭三地部分产业享受税收优惠

On April 8, 2014, the State Administration of Taxation circulated the *Notice on Preferential Tax Policies and Preferential Catalogue in Guangdong Hengqin New Area, the Fujian Pingtan Comprehensive Pilot Zone and the Qianhai Shenzhen-Hong Kong Modern Service Industry Cooperation Zone* (the “Notice”). According to the Notice, the enterprises engaged in the “encouraged businesses” under the

preferential category of the Notice will enjoy a 15% income tax rate if they are registered in the above-mentioned areas. This preferential tax policy will be implemented for 7 years from January 1, 2014 to December 31, 2020. It is noteworthy, however, that financial service sector, which used to be a hot topic during the drafting process of the Notice, was not included in the preferential catalogue of the Notice.

2014年4月8日，国家税务总局发布了《关于广东横琴新区、福建平潭综合实验区、深圳前海深港现代化服务业合作区企业所得税优惠政策及优惠目录的通知》，对设在横琴新区、平潭综合实验区和前海深港现代服务业合作区的鼓励类产业企业减按15%的税率征收企业所得税。该优惠政策适用时间为自2014年1月1日起至2020年12月31日，共7年。但是，此前备受关注的金融业并未包含在该三个地区各自的优惠目录中。

## SHANGHAI FTZ UPDATES / 上海自贸区近期动态

### Detailed Rules on Foreign Investment in Value-Added Telecom Service Industry and Cultural Industry within Shanghai FTZ Released

#### 上海自贸区出台外资企业经营增值电信业务和文化产业相关细则

On April 15, 2014, the Ministry of Industry and Information Technology (“MIIT”) released and implemented the *Trial Administrative Measures for Foreign Investment in Value-Added Telecommunications Services in the China (Shanghai) Pilot Free Trade Zone* (the “Measures”). The Measures have mainly set out the approval procedures, application requirements and materials applicable to foreign investment in value-added telecommunication service within Shanghai FTZ. Compared to foreign

investment in the same businesses outside of Shanghai FTZ, the Measures delegate MIIT’s approval authority to the Shanghai Communications Administration and reduce the approval period from 5 months to 2 months.

In addition, in late April, the Administration Committee of Shanghai FTZ, Shanghai Municipal Administration of Culture, Radio, Film and TV and other 3 departments jointly issued and implemented the *Rules for the Implementation of the Program for*

*Opening up Cultural Market in the China (Shanghai) Pilot Free Trade Zone* (the “Rules”). Following the *Notice on the Implementation of Cultural Market Administration Policy in the China (Shanghai) Pilot Free Trade Zone* issued by the Ministry of Culture late last year, the Rules mainly set forth the approval procedures, application requirements and materials applicable to foreign investment in production and sales of game and entertainment devices, performance brokerage and performance or

entertainment places.

**Release of the Measures and the Rules makes investment by foreign investors in the aforesaid business sectors in Shanghai FTZ more practical and executable.**

2014年4月15日,工业和信息化部(“工信部”)发布了《中国(上海)自由贸易试验区外商投资经营增值电信业务试点管理办法》(“《办法》”),并于发布之日开始施行。《办法》主

要对外资企业在自贸区内经营增值电信业务的审批程序、申请条件和申请材料等作出明确规定。与区外外资企业投资经营增值电信业务相比,《办法》将区内外资企业投资经营增值电信业务的审批权限从工信部下放至上海市通信管理局,同时将审批期限从五个月缩短至两个月。

4月下旬,中国(上海)自由贸易试验区管理委员会、上海市文化广播影视管理局等五部门联合制订并发布了《中国(上海)自由贸易试验区文化市场开放

项目实施细则》(“《实施细则》”),并于发布之日开始施行。《实施细则》在去年年底发布的《文化部关于实施中国(上海)自由贸易试验区文化市场管理政策的通知》的基础上,对外资企业从事游戏游艺设备的生产和销售、设立外资演出经纪机构和演出场所以及设立外资娱乐场所的审批程序、申请条件和申请材料等作出了明确规定。

上述实施细则的出台,意味着外资在自贸区内进行相关领域的投资变得切实可行。

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