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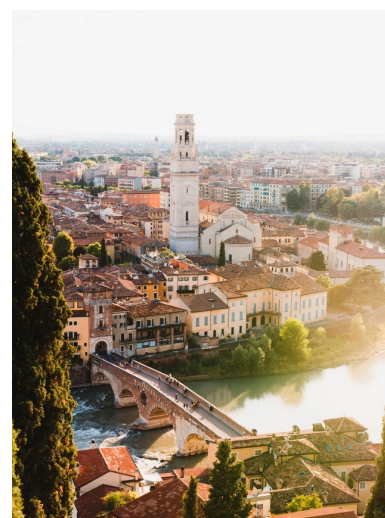
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CAPITAL MARKET / 资本市场

HKEx Unveiled Landmark Reforms to Welcome Emerging and Innovative Issuers 香港联交所发布上市新规允许“同股不同权”

2018年4月24日，香港联交所发布《新兴及创新产业公司上市制度的咨询总结》（“咨询总结”），同时公布了《上市规则》的修订内容。修订后的《上市规则》已于2018年4月30日生效。《上市规则》在以下方面进行了重大修订：

- (a) 允许符合条件的股权架构存在“同股不同权”的创新产业公司上市。“同股不同权”是指同样股票份额对应不同表决权的特殊股权架构，一般有助于创始人在引入多轮投资者导致股权比例被稀释的同时保持对公司的控制。为保护投资者的权益，新规要求该等公司赴港上市时的最低预期市值需达到400亿港元（或预期市值达到100亿港元以及在最近一个会计年度取得不低于10亿港元的收益），并且要求不同投票权只能给予上市公司在上市时的董事，且不同投票权股份的投票权不得超过普通投票权的10倍。同时，联交所还对于“同股不同权”公司上市后的治理问题进行了额外规定，如上市后不得提高不同投票权股份的股权比例、修改章程等重大事宜必须按“一股一票”的基准投票表决等。一直以来坚持“同股同权”原则的港股市场终于为“同股不同权”公司打开上市大门意义重大，将有利于吸引大量创新产业公司赴港上市。小米已于近期提交港股IPO申请，有望成为“同股不同权”第一股。
- (b) 允许不满足香港联交所主板财务测试的合格生物科技公司上市，并要求该等拟上市公司的预期市值不低于15亿港元，且在上市前已经由大致相同的管理层经营现有业务至少两个会计年度。该规定针对生物科技企业的高潜力、周期长的行业特征，有助于吸引优质生物科技公司赴港上市。
- (c) 修改创新类企业的第二上市标准，要求将联交所作为第二上市地的合格发行人需为已在纽交所、纳斯达克等合格交易所上市，并于至少两个会计年度内保持良好的合规记录的创新产业公司，同时对其赴港上市预期市值作出了一定要求。值得注意的是，现行《上市规则》以业务重心是否在大中华地区为标准，将第二上市申请人分为非大中华公司及大中华公司，而在现行规定下大中华公司不能进行第二上市。此次《上市规则》的修订就创新类企业取消了该限制，或将吸引已登陆美股等交易市场的优秀国内创新型科技公司重返港股。

On April 24, 2018, the Stock Exchange of Hong Kong Limited (the “HKEx”) announced the *Consultation Conclusions on the Listing Regime for Companies in Emerging and Innovative Sectors* and the relevant amendments to the main board listing rules (the “New Rules”). Effective from April 30, the New Rules made significant changes to the current rules:

- (a) allow a qualified issuer to have weighted voting right or WVR structure. An issuer with the WVR structure has a super voting class of common stock, enabling the founders to maintain control over the issuer with diluted equity. According to the New Rules, the beneficiaries of WVR shall be directors of the issuer, and the voting power attached to WVR shares shall not be more than ten times of the voting power of the ordinary shares. A qualified WVR issuer is required to have a higher market capitalization of not less than HKD40 billion, or a market capitalization of not less than HKD10 billion plus revenue of at least HKD1 billion for its most recent audited financial year. To protect investors’ rights, certain key matters such as amending the articles of association shall remain decided on a “one-share, one-vote” basis by the stockholders. HKEx has for a long history adhered to the “one-share, one-vote” governance principle. Its allowance of the WVR structure is a landmark change that is expected to attract a large number of innovative companies to the Hong Kong capital market. Xiaomi, a tech giant, has recently filed for an IPO in Hong Kong with the WRV structure.
- (b) permit listings of biotech companies that do not meet financial eligibility tests for the main board. Such a biotech company is required to have a minimum expected market capitalization of HKD1.5 billion at the time of listing and to have been in operation in its current line of business for at least two financial years prior to listing under substantially the same management group. This amendment has been introduced to the biotech industry that is featured with higher potential and longer investment cycle.
- (c) establish a new concessionary secondary listing route for Greater China and international innovative companies that wish to secondary list in Hong Kong. To be qualified for such secondary listing, the issuers are required to have a good compliance record for at least two full financial years on a qualified exchange such as the New York Stock Exchange, NASDAQ, and the Main Market of London Stock Exchange plc., and they shall have an expected market capitalization as of the secondary listing of a certain amount, among others. The New Rules also unleashed a previous restriction and now welcome the Greater China innovative issuers to have secondary listing in HKEx, in a hope to attract China-focused innovative companies that have already listed on qualified exchanges to return to the Hong Kong market.

CSRC Officially Launched H-share Convertibility Reform H股“全流通”试点正式启动

2018年4月20日，证监会披露联想控股成为首家H股“全流通”试点企业，同日，中国证券登记结算有限责任公司（“中国结算”）和深圳证券交易所（“深交所”）联合发布了《H股“全流通”试点业务实施细则（试行）》（“《实施细则》”），以落实促使来自内

On 20 April 2018, the China Securities Regulatory Commission (“CSRC”) announced that Legend Holdings Corporation would be the first pilot company for the H shares convertibility reform. On the same date, the China Securities Depository and Clearing Corporation Limited (“CSDC”) and the Shenzhen Stock Exchange (“SZSE”) jointly issued the *Trial Implementing Rules*

地的港股上市公司的内资股能够转换为H股，并在港股市场上自由流通。《实施细则》对H股“全流通”的账户安排、跨境转登记、存管、持有明细维护、交易结算等流程进行了明确规定，并要求H股“全流通”试点股份在完成跨境转登记成为境外上市股份后，不得再转回成为非境外上市股份，H股“全流通”专用账户只能卖出，不得买入。根据深交所官方网站的介绍，下一步，中国结算将在《实施细则》的框架下进一步发布H股“全流通”试点业务指南。

配合联交所近期一系列制度改革，如允许“同股不同权”公司、尚未盈利的生物科技公司上市等（见本期 *Newsletter* 第1则新闻），H股“全流通”有望吸引更多优质内地公司赴港上市，并有助于拓宽股权投资基金的退出渠道。

PRIVATE EQUITY / 私募股权投资

New Asset Management Regulation Released

2018年4月27日，中国人民银行、中国银行保险监督管理委员会、中国证券监督管理委员会（“证监会”）、国家外汇管理局正式下发《关于规范金融机构资产管理业务的指导意见》（“《意见》”）。相比于《关于规范金融机构资产管理业务的指导意见（征求意见稿）》（详见本所2017年12月期《China Regulatory Updates》），《意见》将私募投资基金明确纳入调整范围，规定除与“私募投资基金专门法律、行政法规”存在冲突的条款外，《意见》的其他条款都将适用于私募投资基金。同时，《意见》将不适用于创业投资基金和政府出资产业投资基金，其相关规定将另行制定。

此外，《意见》在征求意见稿的基础上进一步将过渡期延长至2020年底，为资管产品的相关发行人和管理人提供了更充足的整改时间。在此期间现行私募规则可能会根据《意见》对私募股权投资基金的现行监管进行进一步调整和落实，我们也将进行持续关注。

GENERAL CORPORATE / 公司法

Supreme Court Rarely Invalidated An Entrusted Agreement

近期，最高人民法院（“最高法”）第三巡回法庭对福建伟杰投资有限公司（以下简称伟杰公司）与福州天策实业有限公司（以下简称天策公司）以及第三人君康人寿保险股份有限公司（以下简称君康人寿公司）营业信托纠纷一案进行了二审审理。最高法认定天策公司、伟杰公司之间签订的代持君康人寿公司股权的《信托持股协议》无效，裁决撤销原判，发回重审。

在之前的相似案例中，法院通常会基于《合同法》规定的合同无效情形中的“违反法律、行政法规的强制性规定”，以协议是否违反其订立时法律、行政法规的强制性规定来认定股权代持协议的有效性（对于外资企业通常会判断其是否通过股权代持协议参与外资禁止行业投资或进行超出外资持股限制的投资）。如前述

for the Pilot Program on Convertibility of H-shares (the “Rules”), setting forth the various implementation rules to enable mainland shareholders of H-share companies to convert their non-tradable stock into free floating H-shares, from such perspectives as account arrangements, cross-border transfer registration, custodian maintenance details on securities, among others. According to SZSE, CSDC will further formulate more detailed guidelines to implement the H-shares convertibility reform within the framework of the Rules.

A successful convertibility reform on H-shares is expected to attract more high-quality mainland companies to get listed on the Hong Kong capital market and would also provide the private equity investors with more flexible exit opportunities.

四部门正式下发《资管新规》

On April 27, 2018, People’s Bank of China, the China Banking and Insurance Regulatory Commission, the CSRC and the State Administration of Foreign Exchange officially announced the *Guiding Opinions on Regulating Asset Management Business of Financial Institutions* (the “Guiding Opinions”). Compared with the draft for comments (see the December 2017 issue of *Han Yi’s China Regulatory Updates* for details), the Guiding Opinions have specified that they shall apply to the private equity funds as well (unless otherwise stipulated by applicable laws and administrative regulations). Venture capital funds and government-sponsored industry investment funds are however not governed by the Guiding Opinions and the relevant rules will be otherwise formulated.

The Guiding Opinions further extended the transition period to the end of 2020, with an effort to provide more rectification time for the relevant issuers and managers. More detailed implementation rules are yet to be spelt out to address certain discrepancies between the Guiding Opinions and other CSRC rules governing the private equity funds (such as the *Interim Measures for the Supervision and Administration of Private Investment Funds*).

最高法罕见裁定代持保险公司股权协议无效

In a recent ruling by China’s Supreme Court (the “Supreme Court”) (*Fujian Weijie Investment Co., Ltd. (“Weijie”) v. Fuzhou Tiance Industry Co., Ltd. (“Tiance”)*), the Supreme Court ruled invalidity of a shareholding entrustment agreement regarding entrusted equity interest held by Weijie in the interest of Tiance involving Tiance’s investment in June Life Insurance Co., Ltd.

In similar cases of the past, the applicable courts generally recognize validity of an underlying entrusted agreement unless such an agreement “violates the mandatory provisions of the applicable laws and administrative regulations (as formulated by the National People’s Congress (or its standing committee) or the State Council, respectively)” in accordance with the *Contract Law*. In this case, however, the Supreme Court claimed that the underlying entrustment agreement violated a provision that “an investor shall not entrust or be entrusted by others to hold the

结论为否，法院一般会认可该等股权代持协议的有效性。而在本案中，尽管不存在违反法律、行政法规强制性规定的情形，最高法认定该协议明显违反了《中国保险监督管理委员会《保险公司股权管理办法》》（其效力位阶属于部门规章，而非法律、行政法规）关于“任何单位或者个人不得委托他人或者接受他人委托持有保险公司的股权”的规定，基于允许隐名持有保险公司股权将加大保险公司的经营风险并在一定情况下还将危及金融秩序和社会稳定，最高法最终以《信托持股协议》符合《合同法》所规定的合同无效情形中的“损害社会公共利益”为由认定其无效。基于本案例，对于涉及公共利益的特殊行业，特别是金融行业（如银行、证券、基金等），在涉及相关代持安排时，相关方不仅需要关注法律、行政法规中的强制性规定，还需注意行业监管部门出台的部门规章中的禁止性规定，违反该等禁止性规定可能会成为法院认定“损害社会公共利益”的基础从而导致相关代持安排的无效。

equity interest of an insurance company” as provided under the *Administrative Measures for the Equity of Insurance Companies*, a lower-level departmental rule promulgated by China Insurance Regulatory Commission. The Supreme Court reasoned that allowing the entrusted shareholding arrangement involving insurance companies would increase financial risks and even result in social instability, and it found necessary to invalid such an agreement applying another principle under the *Contract Law* that such an arrangement “damages public interests”. This ruling is likely to set up an important precedent in connection with the commonly seen entrusted arrangement. When the relevant parties enter into entrusted agreements involving sensitive industries, for example, the financial industry, they should not only look into the mandatory requirements under the applicable laws and administrative regulations promulgated by the National People’s Congress and the State Council, but also should carefully evaluate other lower-effect regulatory rules so as to ensure the validity of such an entrusted arrangement.

FOREIGN INVESTMENT / 外商投资

China Allows Foreign Investors to Control Securities Firms 外资可控股证券公司

近日，证监会正式发布《外商投资证券公司管理办法》，允许符合条件的外资控股合资证券公司（持股比例上限从49%放宽至51%）。此前，在2017年11月10日中美元首会晤经济成果吹风会上和近日在博鳌亚洲论坛2018年年会上，相关人员均透露过相关信息，拟取消银行和金融资产管理公司的外资持股比例限制等金融领域开放措施，并将在未来几个月内落实，其中包括将证券公司、基金管理公司、期货公司、人身险公司的外资持股比例的上限放宽到51%、三年以后不再设限等（详细内容请见我所2017年12月刊*China Regulatory Updates*）。

CSRC has recently issued the *Administrative Measures for Foreign Investment in Securities Companies*, lifting the restrictions on qualified foreign investors becoming controlling shareholders in joint-venture securities companies, and raising the foreign ownership cap from 49% to 51%. This is to implement the relevant signals to further open up China’s various financial sectors to foreign investors involving banking, securities, and insurance industries, etc. (see the *December 2017 issue of Han Yi’s China Regulatory Updates for details*) as released during the meeting between the presidents of the US and China in November 2017 and recently at the Boao Forum for Asia Annual Conference 2018.

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