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OUTBOUND INVESTMENT / 对外投资

MOFCOM Issued New Rules to Further Relax Regulation on Outbound Investments 境外投资新规出台 商务部进一步简政放权

On September 6, 2014, the Ministry of Commerce ("MOFCOM") issued the amended *Measures on the Administration of Overseas Investments* (the "Measures"), which becomes effective on October 6. Compared with the previous rules issued by MOFCOM in 2009 (the "Decree No. 5"), the Measures greatly narrow down the scope of domestic enterprises' outbound investments subject to MOFCOM's approvals, and shorten the approval timeline. The Measures also clarify the filing requirements and procedures for outbound investments, and delegate the authority for filing of local enterprises' outbound investments to MOFCOM's provincial counterparts.

Other major highlights of the Measures include removing the Decree No. 5's requirement that "enterprises should obtain approvals of competent government authorities before the contracts or agreements relating to outbound investments take effect", (i.e., the effectiveness of outbound investment agreements shall no longer be conditioned on the approvals of MOFCOM and its local counterparts)

and not requiring enterprises to submit the approval or filing documents issued by the National Development and Reform Commission ("NDRC") and its local counterparts when applying for the approvals of MOFCOM. However, it should be noted that, according to the *Administrative Measures for Approval and Filing of Overseas Investment Projects* issued by NDRC in April this year (see our *May Issue of China Regulatory Updates* for more information), NDRC still requires enterprises to obtain the approvals of NDRC or its local counterparts before outbound investment contracts or agreements take effect. In light of MOFCOM's relaxation of outbound investment approval requirements, the approvals or filings issued by NDRC would be more critical for enterprises' future outbound investments, especially when multiple bidders are involved.

2014年9月6日, 商务部发布了新修订的《境外投资管理办法》(“《办法》”), 自2014年10月6日起生效。相较于商务部2009年发布的《境外投资管理办法》(“原5号令”), 《办

法》在很大程度上缩小了境内企业境外投资事项的核准范围、缩短了其核准时限。《办法》还对对应备案的境外投资事项的备案要求和程序加以明确, 并将地方企业实施境外投资的备案管理权限下放到省级商务主管部门。

除此以外, 《办法》最大的亮点在于取消了原5号令中“企业应当在其对外签署的与境外投资相关的合同或协议生效前, 取得有关政府主管部门的核准”的要求(即取得商务部门的核准不再作为境外投资协议的法定生效要件), 并不再要求企业在提交核准申请时一并提交国家发展和改革委员会的核准或备案文件。但是需要注意的是, 根据国家发改委于今年4月发布的《境外投资项目核准和备案管理办法》(相关内容请参见我所2014年5月刊*China Regulatory Updates*), 发改委要求企业境外投资文件生效前须取得由发展和改革委员会出具的核准或备案文件。可见, 商务部新修订的《办法》在更大程度上体现了企业境外投资的自主权, 而相对地, 取得发改委的核准或备案则会在企业将来境外投资时, 特别是在存在多方竞标的情况下, 显得更为关键。

FOREIGN INVESTMENT / 外商投资

Hong Kong and Macau Service Providers Allowed to Hold Controlling Interest in Business of E-commerce Websites in Guangdong Province

港澳服务提供者可在粤控股经营电商网站

On October 2, the State Council released the *Reply on Issues concerning the Provision of Online Data Processing and Transaction Processing Services in Guangdong Province by Service Suppliers from Hong Kong and Macau* (the "Reply"), allowing service suppliers from Hong Kong or Macau to hold up to 55% of equity interest in their joint ventures established in Guangdong province for the purpose of providing online data processing and transaction processing services (confined to for-profit e-commerce business websites only).

The Reply fulfills relevant commitments set out in *Supplement No. 10 to the Closer Economic Partnership Arrangement* with Hong Kong and Macau separately (the "CEPAs"), and to some extent breaks through the restriction that foreign investors shall not hold more than 50%

of equity interest in value-added telecom enterprises.

It is noteworthy that, according to Annexes of CEPAs, juridical persons intending to invest as Hong Kong/Macau service providers shall be duly incorporated or established in Hong Kong/Macau and have engaged in substantive business operations in Hong Kong/Macau for a certain period (*at least 3 years, depending on the industry involved*). Where more than 50% of the equity interest of a Hong Kong/Macau service provider has been owned for at least one year since a merger or acquisition by a non-PRC or non-Hong Kong/Macau service provider, the service provider which has been acquired or merged will be regarded as a Hong Kong/Macau service provider. Thus the Reply also makes it possible for foreign investors from other countries to hold controlling

interest in e-commerce website enterprises established in Guangdong Province through acquiring existing Hong Kong/Macau service providers.

2014年10月2日, 国务院下发《关于香港和澳门服务提供者在广东省提供在线数据处理与交易处理业务有关问题的批复》(“《批复》”)。《批复》同意香港服务提供者和澳门服务提供者在广东省设立合资企业提供在线数据处理与交易处理业务(仅限于经营性电子商务网站)的持股比例上限可扩大到55%。

《批复》可以视为对《内地与香港关于建立更紧密经贸关系的安排(补充协议十)》和《内地与澳门关于建立更紧密经贸关系的安排(补充协议十)》中有关承诺的具体落实, 并在一定程度上对外商投资增值电信企业的持股比例不得超过50%有所突破。

需注意, 根据CEPA附件的说明, 如法人投资者希望以香港/澳门服务提供者的身份进行投资, 其除需满足在香港/澳门

合法注册或登记设立外，还应满足在香港/澳门已从事一定年限（至少3年，视不同行业而定）的实质性商业经营。非内地或港澳的服务提供者通过收购或兼

并的方式取得香港或澳门服务提供者50%以上股权满1年的，该被收购或兼并的服务提供者属于香港或澳门服务提供者。《批复》的出台意味着其他国家

或地区的投资者也有机会在取得香港/澳门服务提供者的身份后在广东控股经营电商网站。

CAPITAL MARKET / 资本市场

Shanghai-Hong Kong Stock Connect to Be Launched Soon 沪港通启动在即

In the recent two months, China Securities Regulatory Commission ("CSRC"), Shanghai Stock Exchange and China Securities Depository and Clearing Corporation ("CSDC") have released series of documents in preparation for the launch of Shanghai-Hong Kong Stock Connect (see our July Issue of China Regulatory Updates for more information).

On September 26, 2014, Shanghai Stock Exchange issued *Trial Measures on Shanghai-Hong Kong Stock Connect* (the "Trial Measures"). According to the Trial Measures, security trading service companies established by Hong Kong Stock Exchange and Shanghai Stock Exchange will post the lists of eligible stocks for Northbound trading and Southbound trading respectively on designated websites. It's noteworthy that stocks purchased through Northbound trading can't be resold before the settlement, while those purchased through Southbound trading are not subject to such restriction. On the same day, CSDC issued implementing rules on registration, depository and clearing business for Shanghai-Hong Kong Stock Connect, confirming that CSDC

and Hong Kong Securities Clearing Company will serve as nominal holders of shares under Shanghai-Hong Kong Stock Connect.

On October 10, 2014, CSRC released *Notice of Relevant Issues on Security Companies' Participation in Shanghai-Hong Kong Stock Connect* to regulate security companies involved in Shanghai-Hong Kong Stock Connect. Later on October 17, Shanghai Stock Exchange published the list of first 89 security companies that are qualified to engage in Shanghai-Hong Kong Stock Connect business. Meanwhile, CSRC and Hong Kong Security and Futures Commission signed a memorandum of understanding to strengthen cross-boundary regulatory and enforcement cooperation under Shanghai-Hong Kong Stock Connect.

After 6 months' preparation, Shanghai-Hong Kong Stock Connect is expected to be launched soon. While the timetable issue has attracted much attention, the relevant future tax and foreign exchange policies are also noteworthy.

2014年9月末至10月下旬，证监会、上交所以及中国证券登记结算有限责任公司（“中登公司”）等陆续发布一系列

文件为沪港通（相关内容请参见我所2014年7月刊*China Regulatory Updates*）的启动进行准备。

2014年9月26日，上交所发布《上海证券交易所沪港通试点办法》（“《试点办法》”）。根据《试点办法》，沪股通股票名单和港股通股票名单将分别由联交所证券交易服务公司和上交所证券交易服务公司通过其指定网站公布。需注意，通过沪股通买入的股票，在交收前不得卖出；而通过港股通买入的股票在经确认成交后，在交收前即可卖出。

同日，结算公司就沪港通的登记、存管、结算等出具实施细则，确认中登公司和香港中央结算有限公司分别作为港股通股票和沪股通股票的名义持有人在对方处开立账户。

2014年10月10日，证监会发布《关于证券公司参与沪港通业务有关事项通知》对沪港通所涉证券公司进行管理。2014年10月17日，上交所公布首批获得沪港通业务资格的89家券商的名单。同日，证监会与香港证券及期货事务监察委员会共同签署合作备忘录，进行内地与香港关于沪港通跨境监管合作的制度安排。

经过约6个月的准备，沪港通启动在即。除沪港通启动的具体时间表外，尚未出台的与之相关的税收与外汇政策同样值得关注。

CSRC Issued Several Measures to Support Capital Market Reform and Innovation in Shenzhen 证监会发文支持深圳资本市场改革

CSRC recently issued *Several Measures on Supporting the Reform, Innovation and Development of Capital Market in Shenzhen* (the "Measures") to support the capital market reform in Shenzhen and accelerate the implementation of various advanced pilot policies regarding financial reform in Qianhai.

The highlight of the Measures is that CSRC will actively study and develop schemes to promote the listings of unprofitable Internet and high-tech innovative enterprises on ChiNext after they have been listed on the National Equities Exchange and Quotations ("NEEQ") for more than 12 months. As provided in *Decision of the State Council on Issues Relating to the NEEQ* (the "Decision"), any company listed on the NEEQ may directly apply with a stock exchange for listing of its

shares for trading if it satisfies the listing requirements. Compared with the Decision, the Measures propose to allow Internet and high-tech innovative enterprises to be listed on ChiNext even if they fail to satisfy all the listing requirements (especially the profit requirement), which provide policy support to the development of those enterprises. We will further follow up with the future implementation of this measure.

Furthermore, CSRC intends to (i) allow qualified fund subsidiaries to raise domestic funds to invest in overseas securities; (ii) support the offshore parent companies or controlling subsidiaries of Qianhai enterprises to issue RMB bonds in the domestic market; (iii) support the preferential finance policies of Shanghai Free Trade Zone to be implemented in

Qianhai. Such measures will further diversify the investment and financing channel of PE funds.

证监会于近日印发《关于支持深圳资本市场领域改革创新发展的若干措施》（“《措施》”），以支持深圳资本市场改革创新、加快推进前海金融先行先试。

《措施》的亮点在于证监会将积极研究制定方案，推动在深交所创业板设立专门的层次，允许符合一定条件尚未盈利的互联网和科技创新企业在全国中小企业股份转让系统（“全国股份转让系统”）挂牌满12个月后到创业板发行上市。根据《国务院关于全国中小企业股份转让系统有关问题的决定》（“《决定》”），在全国股份转让系统挂牌的公司，达到股票上市条件的，可以直接向证券交易所申请上市交易。相比于《决定》，《措施》进一步允许了满足一定条件但尚未达到上市条件（未盈利）的互联网和科技创新企业在创业板中专门设立的层次上市，这意味着政策

对互联网和科技创新企业发展的支持。我们将继续跟进此项措施的落实。

此外，证监会(i)拟允许符合条件的基金子公司募集境内资金进行境外证券投资

资；(ii)支持前海企业的境外母公司或控股子公司在境内市场发行人民币债券，且募集的资金可在境内或境外使用；并且(iii)支持对上海自贸区实施的一系列

金融扶持政策在前海试验和落地。上述规定将有利于部分私募基金投融资渠道的多元化。

CSRC Improved Delisting System for Listed Companies

证监会完善上市公司退市制度

On October 15, 2014, CSRC issued *Several Opinions on Reform, Improvement and Strict Implementation of the Delisting System for Listed Companies* ("the Opinions"), which will become effective on November 16, 2014.

The highlight of the Opinions is that they clarify the compulsory delisting system for companies committing major violations. According to the Opinions, companies having committed fraud during securities issuance or major violations in respect of information disclosure shall be suspended from listing. Generally, a stock exchange shall terminate the listing or trading of relevant shares within one year after CSRC made decision to grant administrative penalty for such violations or refer such violations to public security organs. Meanwhile, the Opinions urge to strictly enforce the compulsory delisting indicators that identify companies failing to satisfy trading standards and requirements. The shares of those delisted companies shall be listed for transfer at the special tier established by the NEEQ. In addition, the Opinions also provide the rules for voluntary delisting, pre-delisting reorganization period and delisting indicators.

Along with the issuance of the Opinions, Shanghai Stock Exchange and Shenzhen Stock Exchange have correspondingly revised and published their new listing rules, and are soliciting public comments for their respective supporting systems in relation to the re-listing of delisted companies and pre-delisting reorganization period. It should be noted that the major indicators set up by Shanghai Stock Exchange and Shenzhen Stock Exchange for relisting are the same as those for IPO.

Once the Opinions comes into effect, penny stocks and stocks of listed companies committing major violations will face higher delisting risks. Given the stricter requirement for backdoor listing in *Circular on Strictly Applying the Listing Criteria for IPO in the Approval of Backdoor Listing* issued by CSRC and the higher re-listing standards set up by Shanghai Stock Exchange and Shenzhen Stock Exchange, it is expected that the difficulties and risks of backdoor listing may further increase in the future.

2014年10月15日，证监会发布《关于改革完善并严格实施上市公司退市制度的若干意见》（“《退市意见》”），《退市意见》自2014年11月16日起生效。

《退市意见》的亮点在于对重大违法公司强制退市制度的明确。根据《退市意见》，对于欺诈发行/有重大信息披露违法行为的上市公司应暂停上市。一般情况下，证券交易所应在前述违法行为被证监会作出行政处罚决定或者被依法作出移送公安机关决定之日起1年内，对相关股票作出终止上市决定。《退市意见》还要求严格执行不满足交易标准要求的强制退市指标。强制退市公司的股票应当统一在全国中小企业股份转让系统设立的专门层次挂牌转让。此外，《退市意见》还对主动退市、退市整理期和退市指标的统一等内容进行了规定。

《退市意见》发布后，上交所与深交所已相应修订并公布各自的《上市规则》，同时就与退市公司重新上市和退市整理期有关的配套制度征求公众意见。值得注意的是，上交所和深交所在各自的《上市规则》中将退市公司重新上市的主要指标要求与IPO要求等同。

在《退市意见》生效后，绩差股及重大违法公司股票退市风险加强。结合之前证监会在《关于在借壳上市审核中严格执行首次公开发行股票上市标准的通知》中对借壳上市标准的提高以及上交所与深交所对退市公司重新上市标准的提高，可以预见投资者进行借壳上市的难度和风险都将增加。

CSRC Further Streamlined Approval Procedures for Mergers and Reorganizations of Listed Companies

证监会进一步简化上市公司并购重组审批程序

Recently, CSRC issued series of administrative regulations on mergers and reorganizations of listed companies to further streamline relevant approval procedures.

On October 23, CSRC released the revised *Administrative Measures for Material Asset Reorganizations of Listed Companies* (the "Reorganization Measures") and *Administrative Measures for Acquisitions of Listed Companies* (the "Acquisition Measures"), which will become effective on November 23. The revision of these two measures is the further implementation of the amendment to Security Law in late August (see our *September Issue of China Regulatory Updates for more information*). The highlights include: (a) the approval scope has been narrowed down, including cancellation of prior approval for tender offers, approvals for two circumstances under

which tender offer obligations are exempted, and approval for listed companies' material asset reorganizations that do not constitute back-door listings; (b) it is clarified that back-door listings are subject to the same requirements for IPO approval, and that companies listed on ChiNext shall not conduct back-door listings; (c) the restriction on the threshold for purchasing assets from non-affiliated third parties by issuing shares and the mandatory requirement as to compensation for prediction on profit have been cancelled.

On the other hand, CSRC, the Ministry of Industry and Information Technology, NDRC and MOFCOM jointly published the *Work Plan on Parallel Approvals of Administrative Licensing for Mergers and Reorganizations of Listed Companies* (the "Work Plan") on October 24, according to which NDRC's approval

and filing of overseas investment projects, and MOFCOM's approval of foreign investors' strategic investment in listed companies and the review of concentration of business operators will no longer serve as preconditions for CSRC's approval for mergers and reorganizations of listed companies. Instead, the parallel approval scheme has been adopted and the applicants now may apply with NDRC, MOFCOM and CSRC simultaneously for those approvals. The Work Plan also specifies the method and time for the implementation of the parallel approval scheme.

近日，证监会颁布了一系列有关上市公司并购重组的监管法规，进一步减少和简化上市公司并购重组的审批程序。

10月23日，证监会发布修订后的《上市公司重大资产重组管理办法》（“《重组办法》”）和《上市公司收购管理办法》（“《收购办法》”），自11月23

日起生效。此次《重组办法》和《收购办法》的修订是对此前《证券法》修改（相关内容请参见我所2014年9月刊 *China Regulatory Updates*）的内容的进一步落实，与修订前相比：(a)减少了审批事项，取消要约收购事前审批及两项要约收购豁免情形的审批，对不构成借壳上市的重大资产重组行为也不再要求报批；(b)明确对借壳上市执行与

IPO审核等同的要求及创业板上市公司不允许借壳上市；(c)取消向非关联第三方发行股份购买资产的门槛限制和盈利预测补偿的强制性规定要求。

另一方面，证监会、工业和信息化部、发展改革委、商务部于10月24日联合发布《上市公司并购重组行政许可并联审批工作方案》（“《方案》”），决定

境外投资项目核准和备案、外国投资者战略投资上市公司核准和经营者集中审查等三项审批事项，不再作为证监会上市公司并购重组行政许可审批的前置条件，改为并联式审批，即申请人可同时就有关事项报请发改委、商务部和证监会审批。《方案》同时对并联审批的方式、实施时间等作出了规定。

SHANGHAI FTZ UPDATES / 上海自贸区动态

State Council Suspends Implementation of Certain Administrative Regulations in Shanghai Free Trade Zone 国务院暂停部分行政法规在上海自贸区适用

On September 4, 2014, the State Council issued a decision to temporarily suspend and adjust the implementation of 27 special access administrative measures under certain administrative regulations and departmental rules in the Shanghai Free Trade Zone (“Shanghai FTZ”). Such adjustments reflect the amendments made by the 2014

version *Negative List* of Shanghai FTZ to the 2013 version (see our July Issue of *China Regulatory Updates* for more information), and provide a stronger legal foundation for the implementation of the 2014 version *Negative List*.

2014年9月4日，国务院发布《国务院关于在中国（上海）自由贸易试验区内暂时调整实施有关行政法规和经国务院

批准的部门规章规定的准入特别管理措施的决定》，在自贸区内暂时停止相关行政法规规定的27项外商投资准入特别管理措施的适用。该等调整与上海自贸区2014版负面清单对2013版负面清单所做的调整相一致（相关内容请参见我所2014年7月刊 *China Regulatory Updates*），为自贸区2014版负面清单的实施提供了更有力的法律保障。

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