

September 2014



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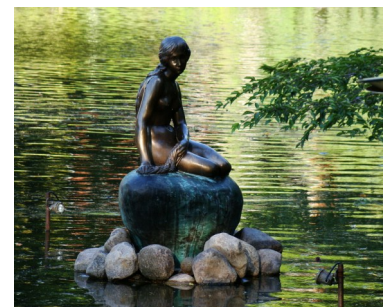
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PRIVATE EQUITY / 私募股权投资

CSRC Issued *Interim Measures for Supervision and Administration of Private Investment Funds* 证监会发布《私募投资基金监督管理暂行办法》

On August 21, 2014, CSRC issued the *Interim Measures for the Supervision and Administration of Private Investment Funds* (the "Measures"), and for the first time provided detailed rules and guidance for the regulation and development of the PE industry in China after it took over the administration authority. Highlights of the Measures include, among others:

- (a) Simplification of registration and filings. The Measures adopted a post-event filing mechanism, under which all PE managers are required to register themselves with the Asset Management Association of China (or AMAC), and to undertake the requisite filing procedures after the fund raising is completed, which hopefully will significantly simplify the administration formalities.
- (b) Refined the definition of "Qualified Investors". The Measures recognized *qualified investor* in a more comprehensive and reasonable manner by evaluating investors moderately from the following three aspects: the scale or level of their assets or income, their capability to identify and tolerate risks, and their minimum subscription amount of any single PE fund.
- (c) Prevention of public placement in disguised forms. Pursuant to the

Measures, where non-corporate entities in the forms of partnership, contractual arrangement and etc., raise funds from multiple investors and make investments directly or indirectly to PE funds, a "penetrating review" shall be carried out to examine whether the ultimate investors are qualified investors and the number of all underlying investors shall be counted in an aggregated basis. Nevertheless, for any investment plan, so long as it is legally established and duly filed with AMAC, it will be regarded as a single qualified investor pursuant to the Measures and be exempted from the so-called "penetrating review".

- (d) No occupational qualification requirements. CSRC imposed relatively loose regulations on PE and VC funds compared with its regulation on private securities funds. Based on the Measures, management institutions of PE&VC funds are not compulsorily required to join AMAC, and their managers are not required to obtain occupational qualifications.

2014年8月21日，中国证监会在接管私募基金后首次正式对外发布监管规定，即《私募投资基金监督管理暂行办法》（“《办法》”）。该《办法》在促进私募基金发展及加强私募基金规管方面有

不少亮点，主要包括：

- (a) 简化登记备案手续。《办法》对基金募集采取事后备案制，要求各类私募基金管理人应当向基金业协会申请登记，在私募基金募集完毕后向基金业协会办理备案手续，极大地简化了行政手续。
- (b) 优化“合格投资者”定义。《办法》从资产规模或收入水平、风险识别能力和风险承担能力、单只基金最低认购额等三个方面规定了适度的合格投资者标准，相比之前一些规定中对合格投资者的界定更为全面、合理。
- (c) 防止变相公开募集资金。《办法》明确了以合伙企业、契约等非法人形式通过汇集多数投资者资金直接或间接投资于私募基金的，应当穿透核查最终投资者是否为合格投资者，并合并计算投资者人数。但是，对依法设立并在基金业协会备案的投资计划，《办法》将其视为单一合格投资者，豁免穿透核查和合并计算投资者人数。
- (d) 无强制性资格或资质要求。相比私募证券投资基金，证监会对私募股权基金和创投基金的监管较为宽松，根据《办法》，对于私募股权基金和创业投资基金的管理人机构，不强制其加入基金业协会；对其从业人员，不要求其具备基金从业资格。

FOREIGN INVESTMENT / 外商投资

Wholly Foreign-Owned Hospitals Allowed in Seven Pilot Areas 七省市开展设立外资独资医院试点工作

Recently, MOFCOM and the PRC National Health and Family Planning Commission (or NHFPC) jointly released the *Circular on Pilot Programs of Establishing Wholly Foreign-Owned Hospitals* (the "Circular") to allow foreign investors to establish WFOE type of hospitals (expect for traditional Chinese medical hospitals that are still only open to investors from Hong Kong, Macao and Taiwan) in some seven provinces and cities including Beijing, Tianjin, Shanghai, Jiangsu, Fujian, Guangdong and Hainan.

The Circular specified the requirements for foreign investors to establish WFOE hospitals and delegated the administration and approval authority to the competent government agencies at the provincial level, leaving the detailed implementing rules to be further formulated by such pilot provinces and cities.

近日，国家卫生计生委、商务部联合印发《关于开展设立外资独资医院试点工作的通知》（“《通知》”），允许境外投资者通过新设或并购的方式在北京、天津市、上海市、江苏省、福建

省、广东省、海南省设立外资独资医院，但设立中医类医院仅限于香港、澳门和台湾投资者。

《通知》明确了申请设立外资独资医院的境外投资者应当满足的设置要求和标准，并将审批权限下放到省级。根据《通知》，由设区的市级卫生计生行政部门受理本辖区内的外资独资医院设立申请，提出初审意见后报省级卫生计生行政部门审批。具体实施方案将由试点省（市）自行制定。

MOFCOM and SAFE Streamlined Record-Filing Procedures for Foreign Investment in Real Estate Areas 商务部、外汇局改进外商投资房地产备案工作

MOFCOM and SAFE jointly released the *Circular on Improving the Record-Filing Procedures for Foreign Investment in Real Estate Areas* (the "Circular"), effective as of August 1, 2014.

According to the Circular, MOFCOM simplified the record-filing procedures for foreign investment in real estate areas. It also adopted an online e-filing system (as opposed to the traditional paper-based filing system)

and a credit-tracking data base. Foreign-invested real estate enterprises and their investors that were found violating relevant laws and regulations will be blacklisted and publicized on MOFCOM's website.

日前，商务部、外汇局联合发布《关于改进外商投资房地产备案工作的通知》（“《通知》”），自2014年8月1日起开始实施。

根据《通知》，商务部简化了外商投资

房地产的备案程序，并建立外资房地产备案诚信体系。商务部备案由纸质材料备案改为电子数据备案，并采用事中和事后抽查。对经抽查、复查发现违反相关规定的地方审批部门和外资房地产企业及其投资者将被列入“黑名单”在商务部网站予以公示。

INDUSTRIAL POLICY & TAXATION / 产业政策及税收

NDRC Issued Catalogue of Encouraged Industries in Western China 国家发改委发布《西部地区鼓励类产业目录》

On August 20, 2014, NDRC released *Catalogue of Encouraged Industries in Western China* (the "Catalogue"), which will come into effect on October 1, 2014. In addition to the priority industries under the currently effective catalogues nationwide, several other industries are also introduced by this Catalogue as encouraged industries in Western China. The Catalogue applies to all enterprises in Western China excluding FIEs which are subject to the *Catalogue of Industries for Guiding Foreign Investment* and the *Catalogue of Priority Industries for Foreign Investment in Central and Western China*.

The Catalogue is essentially associated with the *Announcement of the State Administration of Taxation on Enterprise Income Tax Issues Related to the Implementation of Western*

Region Development Strategy in 2012 (the "Announcement"). According to the Announcement, from January 1, 2011 to December 31, 2020, enterprises satisfying the following conditions may enjoy a preferential EIT rate of 15% upon approval by competent tax authority: (i) the main business of the enterprise falls into the Catalogue; (ii) income derived from such main business accounts for more than 70% of the enterprise's total revenue in a given tax year. The issuance of the Catalogue indicates that the aforementioned preferential taxation policy might be finally realized soon in practice.

2014年8月20日，国家发改委发布了《西部地区鼓励类产业目录》（“《目录》”），并将于2014年10月1日生效。《目录》在国家现有产业目录中的鼓励类产业的基础上，在西部地区新增了部

分鼓励类产业。《目录》原则上适用于在西部地区生产经营的各类企业，其中外商投资企业按照《外商投资产业指导目录》和《中西部地区外商投资优势产业目录》执行。

《目录》是与国家税务总局2012年《关于深入实施西部大开发战略有关企业所得税问题的公告》（“《公告》”）相配套的一个文件。根据《公告》，自2011年1月1日至2020年12月31日，对设在西部地区以《西部地区鼓励类产业目录》中规定的产业项目为主营业务，且其当年度主营业务收入占企业收入总额70%以上的企业，经企业申请，主管税务机关审核确认后，可减按15%税率缴纳企业所得税。《目录》的公布意味着该项税收优惠政策将得以正式施行。

CAPITAL MARKET / 资本市场

New Amendments to Securities Law Streamlined Acquisition of Listed Companies

《证券法》修改简化上市公司收购

On August 31, 2014, the PRC legislative authority approved the Amendments to the PRC Securities Law ("Amendment"), pursuant to which acquisition of A-share listed companies through tender offers and alternation thereof will no longer be subject to CSRC's pre-approval. Specifically,

(a) Acquirers will not need to submit any acquisition report for CSRC's approval before they place and announce tender offers. Instead, they are only required to make public announcements of their

tender offers, which expectedly will make an acquisition of listed companies less cumbersome to parties involved; and

(b) Alternation of tender offers will not require CSRC's pre-approval. Instead, acquirers now will only need to make public announcements of detailed changes to their tender offers in a timely manner so that the parties involved may enjoy more flexibility during the acquisition process.

2014年8月31日，全国人大常委会通过了对《证券法》的修正案，本次修改取

消了收购上市公司的事前审批和变更要约收购的审批，并相应地在罚则中删除了“报送上市公司收购报告书”和“擅自变更收购要约”的收购人违规责任，具体如下：

(a) 将收购人事前报告改为公告。原《证券法》规定，收购人发出收购要约前必须向证监会报送上市公司收购报告书（“报告书”），在报送后15日内证监会发现报告书不符合法律、行政法规规定的，收购人不得公告其收购要约。本次修改取消了事前报告制度，收购人只需将原来的报告书内容进行公告使交易变得更加简洁，快速。

- (b) 取消要约收购的变更审批。根据原《证券法》，收购人需要变更收购要约的，必须事先经证监会批准后，予以公告。本次修改取消了该项审批，仅要求收购人及时公告具体变更事项，赋予其更大的自由度和自主权。

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