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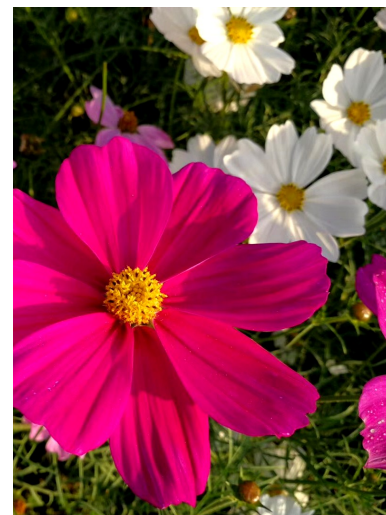
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CAPITAL MARKET / 资本市场

CSRC Solicits Comments on Rules for the New Science and Technology Innovation Board 科创板系列文件公开征求意见

中国证监会于2019年1月30日公布了《关于在上海证券交易所设立科创板并试点注册制的实施意见》（“《实施意见》”）。同日，证监会还发布了《科创板首次公开发行股票注册管理办法（试行）》和《科创板上市公司持续监管办法（试行）》，上交所发布了《上海证券交易所科创板股票发行上市审核规则（征求意见稿）》等6项配套业务规则，同时向社会公开征求意见，意见反馈截止时间为2019年2月20日。《实施意见》及一系列配套规则对科创板的发行、上市、交易、退市等方面进行了全面的规定，建立了以信息披露为中心的股票发行上市制度。

在科创板定位方面，重点支持新一代信息技术、高端装备、新材料、新能源、节能环保以及生物医药等高新技术产业和战略性新兴产业，推动互联网、大数据、云计算、人工智能和制造业深度融合。

在上市、退市及交易等制度设计方面，(a)作为我国IPO注册制的转型试点，科创板上市的公司应经上交所发行上市审核并报经证监会履行注册程序；(b)考虑到科创企业的特殊性，科创板大幅提升了上市条件的包容度和适应性，在财务方面设置了5套差异化的上市指标（尤其是引入“市值”指标）；在非财务方面则允许VIE结构及同股不同权企业上市，允许企业存在上市前制定、上市后实施的期权激励和员工持股计划等；(c)科创板还实施更加严格的退市制度，不适用暂停上市的规定，应当退市的直接终止上市；(d)在交易机制上，科创板引入投资者适当性要求，并适当放宽涨跌幅限制（上市后的前5个交易日不设涨跌幅，此后设置20%的涨跌幅限制）；(e)控股股东、实际控制人和核心技术人员需遵守36个月的锁定期，且上述人员和公司董监高在公司实现盈利前不得减持首发前股份（但公司上市届满5年的，不再受此限制）。

On January 30, 2019, the China Securities Regulatory Commission (“CSRC”) unveiled the *Implementing Opinions on the Setting-up of the Science and Technology Innovation Board and the Launch of the Pilot Registration System in the Shanghai Stock Exchange*, together with other implementation rules, namely, the *Trial Administrative Measures for the Registration of Initial Public Offerings on the Science and Technology Innovation Board*, the *Trial Measures for the Sustained Regulation over Companies Listed on the Science and Technology Board* and other six draft supporting rules for public comments, including the *Examination Rules for the Issuance and Listing of Stocks Listed on the Science and Technology Innovation Board in the Shanghai Stock Exchange (Draft for Comment)*, among others. Such rules and supporting documents together set forth a comprehensive regulatory structure for the issuance, listing, trading, delisting and other respects of stocks on the Science and Technology Innovation Board (the “Board”).

The Board mainly targets such high and new technology industries and strategic emerging sectors as new generation information technology, high-end equipment, new materials, new energy, energy conservation, environmental protection and biomedicine, among others, in an effort to promote an in-depth integration of the manufacturing industry and internet, big data, cloud computing, artificial intelligence.

Below are a few highlights of the relevant rules concerning the Board, (a) the pilot IPO registration system would be introduced for stocks to be listed on the Board, and the issuance and listing of such stocks would be reviewed by the Shanghai Stock Exchange and then reported to the CSRC for registrations; (b) taking into account the characteristics of target companies, the Board adopts five different sets of financial requirements (including the introduction of “market value” indicator), and further allows issuers with VIE structures, special voting rights, and unexercised option incentives or ESOPs; (c) the Board introduces a more stringent delisting policy, according to which an unqualified company would be delisted directly without an intermediate suspension; (d) as for the trading mechanisms, the Board introduces the investor suitability requirements and lifts the price limits (e.g., no limit in the first five trading days, and thereafter the daily fluctuation limit is lifted to $\pm 20\%$); (e) the controlling shareholder, actual controller and core technical personnel shall abide by a lock-up period of 36 months, and such persons as well as the directors, supervisors and the senior management shall not reduce their shares held prior to IPO before the issuer makes profits (unless it has been listed for over 5 years).

NEW ECONOMY / 新经济

First Regulation on Block-Chain Industry Officially Released 区块链领域首部法规正式颁布

国家互联网信息办公室于近日公布了《区块链信息服务管理规定》（“《规定》”），自2019年2月15日起施行。

《规定》最主要的是建立了区块链信息服务备案管理制度，要求区块链信息服务提供者（包括采用区块链技术和系统向社会公众提供信息服务的主体或者节点，以及为前述主体提供技术支持的机构或者组织）在提供服务之日起十个工作日内通过备案管理系统

Recently, the Cyberspace Administration of China (“CAC”) issued the *Administrative Rules on Block Chain Information Services* (the “Rules”), which will become effective from February 15, 2019.

The Rules established a record-filing system for block chain information services, according to which, a block chain information service provider (including an entity or node providing the public with information services using block chain technology or systems, as well as institution or organization providing the aforesaid entity with technical support) is required to make a filing with CAC via an online system (which has been

(已于1月28日起正式上线运行) 填报相关信息, 履行备案手续; 若变更服务项目、平台网址等事项或终止服务的, 也应分别办理变更或注销手续。此外, 《规定》还明确了区块链信息服务提供者的主体责任, 包括落实信息内容安全管理责任、具备与服务相适应的技术条件、制定并公开管理规则和平台公约、进行用户真实身份信息认证等, 强调了其对信息服务使用者的管理职责。

相比较2018年10月19日发布的征求意见稿, 《规定》删除了特殊行业(如, 新闻、出版、教育、医疗保健、药品和医疗器械等)的主管部门的前置审核要求, 但由于该等要求在《规定》的上位法《互联网信息服务管理办法》中仍然存在, 因此, 如信息服务提供者通过互联网在相关特殊行业提供区块链信息服务的, 仍需符合该等要求。

作为针对区块链领域的第一部规范性文件, 《规定》的出台为区块链信息服务提供者的相关义务及违反该等义务的罚则提供了成文法指引, 我们也可以预见, 未来监管部门的实施细则及行业自律制度应该也会相应落地。

officially launched on January 28) within ten working days from the date of its operation. If such service provider intends to change the service type or platform website, or terminate its service, it shall go through the change or deregistration procedures with CAC. Further, the Rules stipulate the responsibilities and duties of the block chain information service providers, including, among others, managing information content security, maintaining proper technical capabilities to provide services, formulating and disclosing management rules and platform conventions, and implementing ID verification for all users.

Compared with the draft rules for public comments which were issued on October 19, 2018, the Rules removed approval requirements from relevant government authorities for some special fields (including, journalism, publishing, education, healthcare, pharmaceuticals and medical devices). However, as those requirements are still in place in an up-level regulation the *Administrative Measures for Internet Information Services*, we understand that a block chain service provider will be subject to those requirements if it provides block chain services through internet in any specific regulated field.

As the first state level regulation designed for the block chain industry in China, the Rules officially offered statutory guidance for the block chain information service providers. It is expected that the detailed implementing rules as well as self-disciplinary industry rules in this regard will also be launched in the near future.

INTELLECTUAL PROPERTY / 知识产权

Draft Amendments to Patent Law Released for Public Comments 专利法修正案向社会公开征求意见

全国人大常委会于2019年1月4日公布了《中华人民共和国专利法修正案(草案)》(“《草案》”), 向社会公众征求意见。我国现行专利法于1985年施行, 分别于1992年、2000年、2008年进行过三次修正, 此次修正案则是顺应时代发展, 进一步保护专利、鼓励发明创造的要求。

与现行专利法相比, 《草案》进一步加强了对专利权的保护, 主要表现为: (a) 加大侵权赔偿力度, 对故意侵犯专利权的最高可处五倍赔偿额(以权利人受到的损失、侵权人获得的利益或者专利许可使用费为计倍数基础), 并将在难以计算赔偿数额时的法院酌定赔偿额提高至十万元到五百万元; (b) 增加举证责任倒置的内容, 在权利人已经尽力举证、而相关账簿资料主要由侵权人掌握的情况下, 可以责令侵权人提供该等资料, 否则法院可以参考权利人的主张和提供的证据判定赔偿数额; 以及(c) 延长部分专利保护期限, 将外观设计专利权的保护期由现行的十年延长至十五年, 创新药品发明专利则可获得不超过五年的额外保护期。

此外, 《草案》还新设或完善了一系列制度设计, 以促进专利的实施和运用, 比如: (i) 设立了专利开放许可制度, 即专利权人以书面声明开放许可, 任何人通过书面通知和按要求付费的方式获得许可; 以及(ii) 明确职务发明创造的权利义务划分, 单位作为专利权人对职务发明创造有处置权, 但同时发明人或设计人也可以通过股权、期权、分红等激励方式合理分享创新收益。

On January 4, 2019, the Standing Committee of the National People's Congress published the *Amendment to Patent Law of the People's Republic of China (Draft)* (the "Draft") for public comments. The currently effective patent law was implemented in 1985, and amended respectively in 1992, 2000 and 2008. The Draft is aiming to further strengthen protection of patent rights and encourage inventions and creations to correspond to the current regulatory developments in this field.

Compared with the current patent law, the Draft has demonstrated the following key changes:

- (a) Increased infringement compensation. In the case of intentional patent right infringement, the infringer could be imposed of a compensation of up to five times of the actual losses suffered by the relevant patentee, the profits obtained by the infringing party or the royalties for the subject patent. The compensation amount a court may impose at its discretion (when the amount is difficult to calculate using the above standards) has been raised to between RMB100,000 and RMB5,000,000;
- (b) Shifted burden of proof. A court may order the infringer to provide the account books and other related materials if the patentee has made his or her due effort to provide evidence and that such materials are mainly controlled by the infringer. If the infringer fails to provide such materials or provides false ones, the court may then refer to the claimed amount to determine the compensation and solely rely on evidences provided by the patentee; and
- (c) Extended protection periods for certain patents. The protection period for design patents is proposed to be extended to 15 years (as opposed to 10 years currently), and patent protection for innovative drugs can be extended for an additional period of no more than five years.

Besides, the Draft also proposed to establish or to improve a few noteworthy regulatory structures to facilitate patent exploitation and application, such as that: (i) it introduced an open licensing system, under which a patentee may make a written declaration to open license, and any other entity or individual may obtain the

license immediately after a written notice to the patentee with the payment of the required royalties; and (ii) for employment invention, it allows an employer to own and dispose of the subject invention, while the relevant individual inventors or designers can reasonably share gains so obtained in ways such as equity sharing, options, dividends and etc.

DISPUTE RESOLUTION / 争议解决

New Reciprocal Recognition Arrangement Expands the Scope for Mutual Enforcements between the Mainland and Hong Kong 内地与香港签署新安排扩大民商事判决互认

2019年1月18日，最高人民法院和香港特别行政区政府律政司签署了《关于内地与香港特别行政区法院相互认可和执行民商事案件判决的安排》（“《新安排》”），《新安排》对两地相互认可和执行民商事案件判决的范围和判项内容、申请认可和执行的程序和方式、对原审法院管辖权的审查、不予认可和执行的情形、救济途径等作出了全面细致的规定。根据最高院研究室负责人答记者问，《新安排》将在香港转化为本地立法、在内地转化为司法解释后，在两地同时生效，但具体生效日期仍不确定。

根据现行有效的《关于内地与香港特别行政区法院相互认可和执行当事人协议管辖的民商事案件判决的安排》（于2006年7月签署并于2008年8月1日起生效），可在内地与香港之间申请认可和执行的仅限于须支付款项的终审判决（且应在具有书面管辖协议的民商事案件中作出），相比较而言，《新安排》大幅拓宽了两地之间可相互认可并执行的判决范围，除了明确被排除的判决（部分婚姻家庭案件、继承案件、部分专利侵权案件、部分海事海商案件、破产（清算）案件、确定选民资格案件、与仲裁有关案件、认可和执行其他法域裁决的案件等），其他所有生效的民商事判决及刑事案件中有关民事赔偿的判决均可执行，而无需有书面管辖协议，且同时包括金钱判项和非金钱判项。对于金钱判项而言，知识产权侵权纠纷案件、内地不正当竞争纠纷民事案件、香港假冒纠纷案件以及有关商业秘密侵权纠纷案件的判决的相互认可和执行还包括惩罚性赔偿部分。

On January 18, 2019, the Supreme People's Court of the People's Republic of China (the "Supreme Court") and the Department of Justice of the Hong Kong Special Administrative Region ("Hong Kong") signed the *Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Cases between the Courts of the Mainland and of the Hong Kong Special Administrative Region* (the "Arrangement"), providing in details the relevant civil and commercial judgments that could be reciprocally recognized and enforced, covering the scope and procedure for such reciprocal enforcement, examination of original courts' jurisdictions, and approaches to seek remedy, among others. According to the Supreme Court's research office, the Arrangement will take effect simultaneously in the both jurisdictions after it is transformed into respective legislations in Hong Kong and in the mainland, and the effective date thereof is still uncertain.

According to the current arrangement, namely the *Arrangement on the Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Cases under Consensual Jurisdiction between the Courts of the Mainland and of the Hong Kong Special Administrative Region* (which was signed in July, 2006 and became effective from August 1, 2008), only a final judgment with monetary payments in a civil or commercial case under a written jurisdiction agreement can be recognized and enforced between the mainland and Hong Kong. The Arrangement has substantially expanded the scope for mutually enforceable judgments, which now cover all effective judgments (with or without monetary payments and notwithstanding with a written jurisdiction agreement or not) in civil or commercial cases (including the civil part of a criminal case), with limited exceptions as explicitly provided thereunder (i.e., certain cases involving marital and family matters, inheritance, patent infringements, maritime matters, bankruptcy, among others). Further, punitive compensation could also be recognized in cases involving intellectual property infringements, unfair competition judgments by the mainland courts, counterfeit judgments by Hong Kong courts, and commercial secret infringement disputes.

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