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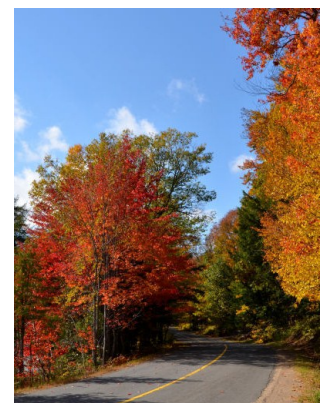
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INVESTMENT / 投资法

China to Implement Negative List System 国务院拟于2018年起在全国推行市场准入负面清单制度

On October 19, 2015, the State Council released *Opinions on Implementing Negative List System for Market Access* (the "Opinions"), according to which China will replace the current administrative approval system with a less cumbersome negative list system on a pilot basis in selected areas from December 1, 2015 to December 31, 2017. The entire country will implement a unified negative list system for market access from 2018.

Negative list system for market access includes a series of systemic arrangements under which the government will specify the various prohibited and restricted industries in the so-called negative list and spell out the relevant administrative measures over such industries. The negative list may cover those areas and projects involving national security, ecological security, allocation of important nationwide productive forces, exploration of strategic resources as well as vital public interest. For those listed in the prohibited list, none of the market entities will be allowed to make investments in such areas, and no approval will be granted; for those listed in the restricted list, market entities may have access to them pursuant to the specified conditions and sometimes subject to government approvals. For those not listed in the negative list, the market entities may equally enter into those areas without any limitation.

The Opinions have distinguished the negative list for market access from that for foreign investment. The negative list for market access will be equally applicable to all market entities (including domestic and foreign investors) but the negative list for foreign investment is only applicable to the foreign investors. The Opinions only covers the negative list system for market access; the negative list for foreign investment will be released separately later. Pursuant to the Opinions, NDRC and MOFCOM will lead the drafting process of the market access negative list, which is to be launched in such pilot regions to be proposed by NDRC and MOFCOM after the approval of the Communist

Party's Central Committees and the State Council. The provincial governments of the relevant pilot regions shall suggest substantive implementing schemes according to the draft negative list and the local realities subject to the State Council's approval. It's expected that the draft of negative list and proposed pilot areas will be released in the following weeks.

The negative list system will provide more predictability regarding whether investors can invest in certain industries. It was for the first time mentioned as a new experimental administrative method for foreign investments in China in the *Decision on Authorizing the State Council to Temporarily Adjust the Relevant Administrative Approval Items Prescribed in Relevant Laws in China (Shanghai) Pilot Free Trade Zone* by the Standing Committee of National People's Congress in 2013. The Opinions have expanded the application scope from foreign investors to domestic investors as well and set to implement this new system from regions to the entire nation from 2018. It is a significant breakthrough in China's administration over the investments, and may lead to the end of the traditional pre-investment approval system that has been implemented for more than 30 years in the country.

The negative list for foreign investment is likely to be formulated based on the one currently carried out in the four free trade zones in Shanghai, Guangdong, Tianjin and Fujian on a trial basis. As the basis law of such negative list, the draft of *Foreign Investment Law* released in early this year is likely to make significant developments in the next two or three years.

2015年10月19日, 国务院发布《国务院关于实行市场准入负面清单制度的意见》(“《意见》”), 按照先行先试、逐步推开的原则, 从2015年12月1日至2017年12月31日, 在部分地区试行市场准入负面清单制度, 从2018年起正式实行全国统一的市场准入负面清单制度。

市场准入负面清单制度, 是指国务院以清单方式明确列出在中华人民共和国禁

止和限制投资经营的行业、领域、业务等, 各级政府依法采取相应管理措施的一系列制度安排。《意见》提出, 对关系国家安全和生态安全、涉及全国重大生产力布局、战略性资源开发和重大公共利益等项目, 可以采取禁止进入或限制等管理措施。对禁止准入事项, 市场主体不得进入, 行政机关不予审批、核准; 对限制准入事项, 或由市场主体提出申请, 行政机关依法依规作出是否予以准入的决定, 或由市场主体依照政府规定的准入条件和准入方式合规进入。市场准入负面清单以外的行业、领域、业务, 各类市场主体皆可依法平等进入。

《意见》对市场准入负面清单与外商投资负面清单进行了区分, 其主要内容仅针对市场准入负面清单制度, 而外商投资负面清单制度将另行规定。市场准入负面清单平等地适用于包括境内、外投资者在内的各类市场主体; 外商投资负面清单则特别适用于境外投资者在华投资经营行为, 是针对外商投资准入的特别管理措施。根据《意见》, 发改委、商务部将牵头起草市场准入负面清单草案和拟开展试点的地区, 在报经党中央、国务院批准后, 组织开展试点工作。试点地区省级人民政府将根据该草案及其具体情况, 提出试行方案, 报国务院批准后实施。上述市场准入负面清单以及试点地区名单预计将于近期公布, 我们将予以持续密切关注。

负面清单监管方式被普遍认为是更加现代化的管理方式。在我国其最早是由全国人大常委会于2013年在《关于授权国务院在中国(上海)自由贸易试验区暂时调整有关法律规定的行政审批的决定》中作为对外商投资的一种新的监管模式所提出。本次《意见》将负面清单管理方式从外资扩展到内资, 明确了两者的关系, 并列出了明确的时间表、拟将市场准入负面清单管理模式自2018年起从区域扩展到全国, 是市场准入制度和投资管理体制的重大突破, 意味着我国实行了三十多年的审批制投资管理体制即将结束, 对境内外投资者皆有重大的意义。

另外, 由此看来, 目前在上海、广东、天津、福建四个自贸区试行的外商投资负面清单制度向全国推行似乎也已是在必行, 《意见》中提到的外商投资负面清单制度很可能将以此为参考进行制定。作为清单的上位法, 年初对外征求意见的替代三资企业法的《外国投资法》也很可能在未来两三年内有所突破性进展。

INSURANCE / 保险法

State Council Solicits Public Comments on Draft of Amended Insurance Law 国务院就保险法修改草案征求意见

On October 14, the Legislative Affairs Office of the State Council released the draft version of amended *PRC Insurance Law* (the "Draft") for public comments.

The insurance industry has seen continuous reforms since the launch of *Opinions of the State Council on Acceleration the Development of Modern Insurance Service* in August, 2014. This amendment is expected to involve another round of significant modifications to the current *PRC Insurance Law* following its recent substantial changes in 2009. The Draft pledged to further relax the market power in its role to allocate market resources, to encourage more reforms and innovations, and to transform governmental supervision with more emphases on the continuous post-access supervision as opposed to the traditional pre-access approval administration. The financial reform scheme proposed by Shanghai Free Trade Zone just a few days ago has also highlighted a few points involving financial innovations of insurance companies in such areas.

The major changes include: (i) the insurance company will be granted with more decision making powers, such as that insurance fund could be used to make equity investment, buy insurance asset management products and so on; (ii) for a life insurance contract with an insurance period longer than 1 year, the Draft has introduced a statutory cooling-off period of no less than 20 days, during which the policyholder may freely cancel the insurance contract; (iii) the Draft proposed to bring in a new generation of solvency supervision system in an effort to establish a modernized insurance supervision network, and (iv) violations of the applicable laws will face more stringent penalties.

2015年10月14日, 国务院发布了《中华人民共和国保险法(征求意见稿)》(“征求意见稿”), 向社会公开征求意见。

自2014年8月《国务院关于加快发展现代保险服务业的若干意见》推出以来, 保险行业不断经历改革。本次修订也是继2009年《保险法》修订之后的又一次

大规模修订。本次修改主要基调是充分发挥市场在资源配置中的作用, 鼓励改革创新, 放开前端管制, 加强事中事后监管等。前几天公布的上海自贸区金融改革方案中也涉及到多条与保险业金融创新相关的改革方案。

本次征求意见稿有以下亮点: (i) 扩大保险公司经营自主权。在人身保险业务范围中增加年金保险; 拓宽保险资金运用形式, 允许保险资金投资股权和保险资产管理产品等; 资金管理也将适度放松以释放保险资本运作活力; 取消财产保险公司自留保费限额、明确保险公司资本保证金按照公司注册资本总额的10%提取, 达到2亿元后可以不再提取; (ii) 规定人身保险合同犹豫期。保险期间超过一年的人身保险合同应当约定犹豫期, 期限不少于20日; (iii) 在保险法中确立新一代偿付能力监管体系; (iv) 扩大对违法行为的打击范围, 提高违法成本。

TAXATION / 税收

Certain Income Tax Pilot Policies Extended to the Entire Nation to Further Promote Innovations

国务院决定在全国推广国家自主创新示范区部分所得税试点政策以进一步鼓励创新

On October 21, 2015, the State Council decided to implement part of the income tax policies carried out in various *National Demonstration Zones of Independent Innovation* ("NDZII") on a pilot basis to the entire country, in an effort to further promote innovations and the country's economic structural adjustments.

Highlights of such income tax policies include: (i) from October 1, 2015, for venture capitals formed as limited partnerships that have made equity investments in nonpublic small and medium-sized high-tech enterprises for more than 2 years, the taxable income of its corporate partners could be deducted by 70% of investment amount; (ii) from October 1, 2015, for the income of a residential enterprise from its transfer of a non-exclusive license with the license term longer than 5 years, the first RMB 5 million will be exempted from income tax and the amount exceeding RMB 5 million will be taxed with a 50% deduction; (iii) from January 1, 2016, for equity interest issued to individual shareholders by the conversion of undistributed profits, or the surplus and capital reserves involving small and medium-sized high-tech enterprises, or for equity rewards

granted the technology employees due to the transformation of technology achievements to productivity involving high-tech companies, such individual shareholders and technology employees may enjoy deferred payment of individual income tax (IIT) and can pay IIT in installments over a 5-year period.

These related tax pilot policies had been originally carried out in the Zhongguancun NDZII and in June, 2015, were expanded to other NDZIIs (as of September 30, 2015, the State Council has approved 10 areas of NDZII, including Beijing Zhongguancun, Wuhan East Lake, Shanghai Zhangjiang, Shenzhen, South of Jiangsu, Tianjin, Changzhutan and Hangzhou), Hewubeng Comprehensive Pilot Zone of Independent Innovation, and Mianyang Technology Town. On October 23, 2015, the Ministry of Finance and State Administration of Taxation jointly released an implementing notice (Cai Shui [2015] No. 116) and have effectively put these tax policies to a national practice.

2015年10月21日, 国务院决定在全国推广国家自主创新示范区部分所得税政策, 推进结构调整、促进创业创新。

该税收政策主要为: (i) 从2015年10月1日起在全国范围内, 有限合伙制创投企业采取股权投资方式投资于未上市中小高新技术企业2年以上, 该创投企业的法人合伙人可按投资额的70%抵扣应纳税所得额; (ii) 从2015年10月1日起在全国范围内, 居民企业转让5年以上非独占许可使用权取得的技术转让所得, 可享受500万元以内部分免征、超过500万元部分减半征收企业所得税的优惠; (iii) 从2016年1月1日起在全国范围内, 中小高新技术企业以未分配利润、盈余和资本公积向个人股东转增股本, 高新技术企业转化科技成果给予本企业相关技术人员的股权激励, 个人股东和技术人员可在5年内分期缴纳个人所得税。

2015年6月, 国务院将中关村国家自主创新示范区有关税收试点政策推广至国家自主创新示范区(截止2015年9月30日, 国务院共批复了10个国家自主创新示范区, 包括: 北京中关村、武汉东湖、上海张江、深圳、苏南、天津、长株潭和杭州)、合芜蚌自主创新综合试验区和绵阳科技城, 此次则将上述所得税优惠试点政策扩围至全国。2015年10月23日, 财政部和国家税务总局发布相关通知(财税[2015]116号), 正式在全国范围内实施上述税收政策。

MOBILE E-COMMERCE / 移动互联网

Ministry of Transport Released Draft Regulations Governing Transportation Network Companies; Private-Car Rides Disallowed

交通部发布网络预约管理办法征求意见稿、私家车不得提供专车服务

On October 10, 2015, the Ministry of Transport released the *Interim Measures on the Administration of Operation Services of Online Pre-booked Taxis (Draft)* (the "Draft") for public comments to address transportation network companies or ride-sourcing platforms such as Uber and Didi Kuaidi.

The Draft proposed to reign the transportation network companies/ TNC into the existing taxi infrastructure, and provides various access conditions for the TNC operators, the operational vehicles and vehicle drivers. For example, the vehicles need to be registered as taxi operational vehicles, and the drivers are required to obtain a qualification license and enter into a labor contract exclusively with a TNC operator. These requirements, if enacted, could substantially restrain the ride-sourcing platforms and force them to

significantly alter their current business models.

Ride-sourcing service is a new business model combining transport service with the internet information service. It will be extremely difficult and also inappropriate for the government to regulate such business model with the traditional taxi regulation approach. Before the release of the Draft, Shanghai's transport agency issued the first ride-sourcing license to Didi Kuaidi on a trial basis, and it is reported that other operators are actively seeking a similar approval. We will follow up with further developments of the Draft.

2015年10月10日，交通运输部公布了《网络预约出租汽车经营服务管理暂行办法（征求意见稿）》（“征求意见稿”），并向社会公开征求意见。《征求意见稿》的监管对象为包括Uber、滴滴快的等在内的互联网专车服务平台。

《征求意见稿》将网络预约出租车（即通常所称的“专车”）纳入传统出租车的管理范畴，设置了网络预约出租车的经营者、车辆和驾驶员的准入条件（其中包括要求预约平台与经营者签署劳动合同、要求相关方取得出租汽车经营资格、车辆出租客运资格和驾驶员客运资格等多项可能会对网络预约平台的运营带来实质性挑战的规定）。与绝大多数媒体评论一致，我们理解，网络预约出租车服务作为一项新型交通网络信息服务，政府恐怕很难、也不宜用监管传统出租车的方法对其进行管理，否则很可能会严重遏制了新兴互联网交通信息服务行业的发展。10月初，在《征求意见稿》出台之前，上海市向滴滴快的发放试点性质的首张专车牌照，其他运营机构据传在积极申请相关牌照。《征求意见稿》目前还只是草稿，对于《征求意见稿》的后续进展，我们将予以持续关注。

FTZ UPDATES / 自贸区近期动态

A New Scheme Released to Accelerate Financial Reform in Shanghai FTZ

央行等六部委与上海市政府联合发布上海自贸区金融改革方案、资本项目自由兑换提速

On October 30, 2015, with the approval by State Council, the People's Bank of China and other five other ministries and commissions together with Shanghai Municipal Government jointly released *The Scheme of Shanghai Free Trade Zone on the Opening-up and Innovation Trial of the Financial Sector and Accelerating the Construction of Shanghai International Financial Center* (the "Scheme"). The Scheme has outlined 40 provisions covering comprehensive aspects of the financial sector including the RMB capital account convertibility, reform and opening-up of the financial service industry both domestically and internationally, construction of a financial market in line with international practice, as well as financial supervision and risk management.

One of the key provisions under the Scheme is about free trade account or FTA. The FTA enables cross-border transactions conducted in the Shanghai FTZ to be separated from onshore transactions. This separation is associated with official efforts to explore free conversion of the capital

account, and test cross-border financial reforms in a risk-controlled manner. It is reported that around 30,000 FTAs have been opened as of the end of August 2015, yet the capital account activities under the FTA are still limited in practice. The Scheme requires that the government agencies to learn lessons from relevant experiences, start various businesses involving the integration of domestic and foreign currencies as soon as possible, and expand the further use of FTA.

The Scheme has also outlined various other provisions such as: (i) to further open up the financial service industry (*a foreign investor may be allowed to hold the controlling stake in a securities company with the maximum shareholding ratio remained at 49%*); (ii) to encourage Shanghai Stock Exchange to establish an international financial assets exchange platform in which foreign long-term capital will have wider access to the onshore capital market; (iii) to encourage the establishment of private equity funds specialized in offshore investments, and to encourage qualified or accredited investors to form offshore

equity investment funds; (iv) to launch the pilot QDII2 scheme to allow accredited individual investors to engage in overseas investments of different industries, real estates and financial products; (v) to support private capital to invest in financial industry; (vi) the current annual limit for the exchange of foreign currencies of USD50,000 of an individual person is likely to be relaxed.

2015年10月30日，经国务院常务会议通过，中国人民银行等六部委与上海市政府公布《进一步推进中国（上海）自由贸易试验区金融开放创新试点、加快上海国际金融中心建设方案》（“方案”）。方案包括了40条框架性的安排，内容涵盖人民币资本项目可兑换、人民币跨境使用、金融服务业对内对外开放、建设面向国际的金融市场建设和金融监管及风险防范。

《方案》要求拓展自由贸易账户（FT账户）体系。FT账户内本外币资金按统一规则管理、使通过该账户开展的跨境交易与其其他账户分开，FT账户体系是探索投融资汇兑便利、扩大金融市场开放和防范金融风险的一项重要制度安排。自去年年中开通至今年8月，已开立近3万个FT账户，但FT账户下资本项目可兑换开放依然不足，在实践中还没有发挥充分的作用。本次《方案》要求

总结自由贸易账户经验，并抓紧启动自由贸易账户本外币一体化各项业务，进一步拓展自由贸易账户功能。

此外，《方案》要求扩大金融服务业的对外开放（比如在持股总额依然不超过49%的情况下，外资可能可以对外资参股证券公司进行控股）、支持上海证券

交易所在自贸试验区设立国际金融资产交易平台（境外资金有机会逐步参与境内股票等市场），支持在自贸试验区设立专业从事境外股权投资的项目公司，支持符合条件的投资者设立境外股权投资基金，启动合格境内个人投资者（QDII2）境外开展实业投资、不动产投资和金融类投资试点、支持民营资本

进入金融业、5万美元一年的个人外汇兑换额度也有可能得到突破。

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For further information, please write us at inquiry@hanyilaw.com.

CONTACT US

Shanghai Office

Suite 1801, Tower I, Huayi Plaza
2020 West Zhongshan Road
Shanghai 200235, China
Tel: (86-21) 6083-9800
Fax: (86-21) 6083-9811



Beijing Office

Suite B-1503
15 West Chaoyang Park Road
Beijing 100026, China
Tel: (86-10) 5867-0155
Fax: (86-10) 5867-0155