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## CIVIL LAW / 民法

### China Adopted General Provisions of Civil Law 民法总则发布

2017年3月15日，第十二届全国人民代表大会第五次会议表决通过了《中华人民共和国民法总则》（“《民法总则》”），将于2017年10月1日起实施。《民法总则》的通过对我国编写民法典的长期努力具有里程碑的意义。

《民法总则》仍采用了目前先行有效地《中华人民共和国民法通则》（1986年颁布并于2009年进行了小的修订，“《民法通则》”）的基本立法框架，并在此基础上列明了民事行为规范的基本原则。以下是从商事角度《民法总则》中的几个值得注意的要点：

- (a) 完善法人制度：《民法总则》确立了营利法人、非营利法人和特别法人三种法人类型，并首次明确了非法人组织（包括个人独资企业、合伙企业、不具有法人资格的专业服务机构等）的民事主体地位，有利于非法人组织在民商事活动中的权利保护。
- (b) 扩展民事权利范围：(i) 首次明确民事主体依法享有股权和其他投资性权利，与现行民商事单行法中对股权、信托权、期权的规定相衔接；以及(ii) 顺应时代发展，首次将个人信息、数据和虚拟财产纳入民事权利保护范围之内。
- (c) 延长诉讼时效：将向人民法院请求保护民事权利的诉讼时效期间从《民法通则》规定的两年延长至三年，有利于保护债权人的合法权益，提升交易安全。当事人不得事先豁免或协议修改诉讼时效。
- (d) 规定习惯为民法法源：与《民法通则》相比，不再将国家政策作为法源，而是规定在处理民事纠纷时，在无法可依的情况下可以适用习惯，使得商业惯例在处理民事纠纷时的适用成为可能。

作为我国民法典的开篇之作，《民法总则》的出台为后续民法分则的起草提供了基础，现行《民法通则》及民商事单行法中规定的合同、财产权、侵权、婚姻家庭和继承等的具体内容还需要在未来编纂《民法分则》时进一步统筹、修改并系统整合，使得其更加符合现代民法体系、并系统性地促进私权的保护。

On March 15, 2017, the PRC National People's Congress adopted the *General Provisions of the Civil Law* (the "General Provisions"), a landmark development of China's long-time effort to compile a unified civil code. The General Provisions will come into effect on October 1, 2017.

The General Provisions have laid out basic principles for regulating all kinds of civil activities and adopted a legislative structure similar to the currently effective *General Principles of the Civil Law*, a mini version of civil code originally adopted in 1986 and slightly amended in 2009 (the "Principles"). While the Principles will remain effective, there are notable changes made by the General Provisions to modernize civil law governance. Set out below are some key highlights from commercial law perspective for your general reference:

- (a) *Re-categorization of civil entities*: The General Provisions have replaced the outdated categorization of legal persons based on enterprises and government institutions and re-categorized them into three types, namely, the profit-making legal persons, non-profit legal persons and special legal persons. Partnerships and professional service agencies not qualified as legal persons are explicitly granted with non-legal-person-entities status, which will facilitate their civil activities and protect their civil rights.
- (b) *Expansion of the scope of civil rights*: (i) equity interest and other investment interests are added as civil rights, along with the provisions sporadically provided in some other civil and commercial rules and regulations regarding equity interest, trust right and option right; and (ii) with the advent and development of the information age, personal information, data and online virtual properties are for the first time clarified under the protection of civil laws.
- (c) *Extension of the statute of limitations*: The statute of limitations for actions is extended from one or two years to three years in order to better protect creditor's rights and interests and further enhance transaction security. The statute of limitations cannot be amended or waived in advance by parties to civil activities.
- (d) *Customs added as a source of law*: Unlike the Principles, national policy is no longer deemed as a source of law in the General Provisions while customs have been added as a source of law, which could be applied in civil disputes in the absence of applicable laws and regulations. Thus, in some circumstances, commercial practices may be used as judgment basis in the resolution of certain civil disputes.

The General Provisions are the opening chapter of the civil code. Separate provisions on contracts, properties, torts, marriage, wills and etc. are expected to be reviewed, reorganized, revised and drafted based on the various specific civil and commercial related laws and regulations that are currently effective along with the Principles. The enactment of civil code, expected in 2020 according to the legislative plan, will likely introduce a better collaborated civil law system that will enhance the country's private rights protection and promote China's rule of law in long run.

## PE&VC FUNDS / 私募股权及创业投资基金

### AMAC Enhances Regulation on Outsourcing Services for Private Funds 基金业协会强化私募基金服务业务监管

2017年3月1日，中国证券投资基金业协会（“基金业

To better regulate service businesses for private funds, the Asset



协会”）发布了《私募投资基金服务业务管理办法》（“《办法》”），以规范私募基金服务业务。

根据《办法》，提供服务的机构应向基金业协会登记并成为其会员，在申请登记时应提交法律意见书，为此基金业协会同时发布了《私募投资基金服务机构法律意见书指引》。服务机构可以从事的服务业务包括基金募集、投资顾问、份额登记、估值核算，以及信息技术系统。《办法》详细规定了从事基金份额登记、估值核算和信息技术系统三项业务的服务机构应满足的条件（比如从事份额登记及信息技术系统的服务机构的实缴资本不得低于人民币5000万），以及该等业务的操作规范；基金募集业务主要由此前颁布的《私募投资基金募集行为管理办法》规定，而投资顾问业务的相关规范还有待制定。

对于私募基金管理人，如自行办理相关服务业务则也应遵守《服务办法》的具体要求；如委托服务机构开展业务，还应尽审慎义务，包括对服务机构开展尽职调查并在后续进行定期评估等，且其应当承担的责任不因委托而免除。

Management Association of China (“AMAC”) released the *Administrative Measures for Service Business Related to Private Investment Funds* (the “Measures”) on March 1, 2017, which became effective as of the date of promulgation.

Pursuant to the Measures, agencies providing the relevant outsourcing services (see below) for private funds (“Service Agencies”) shall register with the AMAC and become members thereof. When applying for registration, Service Agencies shall submit a PRC legal opinion complying with the *Guidelines on Legal Opinions for Private Investment Fund Services Agencies* promulgated together with the Measures.

According to the Measures, Service Agencies are allowed to conduct five types of service businesses, namely, fund raising, investment advisory, unit registration, valuation and IT system services. The Measures have specified the qualification and operation requirements on Services Agencies engaging in unit registration, valuation calculation and IT system services (such as that the paid-in capital for service agencies involving in unit registration and information technology services shall not be less than RMB50 million), while fund raising and investment advisory services are subject to separate AMAC regulations such as *Administrative Measures on the Private Fundraising and investment advisory rules* to be formulated.

Private fund managers operating the relevant services on their own are also subject to the Measures; and if they outsource such businesses to a Service Agency, they shall have prudential duties including, for example, conducting due diligence and regular follow-on assessment on the Service Agency, and shall remain liable for the relevant responsibilities despite outsourcing.

## Insurance Funds Encouraged to Invest in PE Funds Focusing on Manufacturing Industry 保监会等五部委联合发文鼓励保险资金投资制造业私募基金

2017年3月28日，中国人民银行与工信部、银监会、证监会、保监会联合印发了《关于金融支持制造强国建设的指导意见》（“《意见》”），提出从发展多元金融组织体系，多层次资本市场，拓宽融资渠道等多个方面为制造业提供支持。

值得注意的是，《意见》鼓励有条件的保险机构投资设立制造业保险资产管理机构，并允许保险资金投资制造业创业投资基金等私募基金。可以预见，在私募基金领域，保险机构将可能成为越来越重要的参与者。

On March 28, 2017, the People’s Bank of China, the PRC Ministry of Industry and Information Technology, the China Banking Regulatory Commission, the China Securities Regulatory Commission and the China Insurance Regulatory Commission jointly published the *Guiding Opinions on Financial Support to Construction of a Manufacturing Power* (the “Opinions”), proposing to provide more supports to manufacturing industry from such perspectives as developing multiple financial organization system, improving multi-layer capital market systems and widening financing channels, among others.

It is noteworthy that the Opinions encourage eligible insurance institutions to set up insurance asset management agencies focusing on manufacturing sector, and insurance funds are permitted to invest in venture capital funds and other private equity funds focusing on manufacturing industry. It can be expected that insurance institutions will play an increasingly important role in the area of private equity funds.

## INVESTMENT ADMINISTRATION / 投资管理

### NDRC Released *Administrative Measures on Approval and Filing of Enterprise Investment Projects*

#### 国家发改委发布企业投资项目核准和备案管理办法

为贯彻落实2017年2月1日开始施行的《企业投资项目核准和备案管理条例》（“《条例》”）（*详细内容请参见我所2017年1月刊China Regulatory Updates*），国家发展改革委近日发布了《企业投资项目核准和备案管理办法》（“《办法》”），并将于2017年4月8日起生效。

在《条例》的基础上，《办法》针对项目核准的申请

For the purpose of implementing the *Administrative Regulations on Approval and Filing of Enterprise Investment Projects* (the “Regulations”) (please refer to our January 2017 issue of *China Regulatory Updates* for more details) effective as of February 1, 2017, the PRC National Development and Reform Commission (“NDRC”) recently issued the *Administrative Measures on Approval and Record-filing of Enterprise Invested Projects* (the “Measures”) which will become effect from April 8, 2017.

Based on the Regulations, the Measures further clarify and detail the application materials, basic procedures, examination scope and specific requirements for projects subject to approval or filing

文件、基本程序和审查范围及项目备案的具体要求作出了更明确具体的规定，同时强调备案机关及其他行政机关不得非法干预企业的投资自主权，不得擅自增减审查条件，应主要发挥事中事后监管和过程服务职能。对备案类项目，政府的主要关注点仅为投资项目意向信息和项目建设动态信息；对核准类项目，政府仅从维护国家安全、重大公共利益等方面进行审查，对于可能对公共利益造成重大影响的项目应适当征求公众意见，对于特别重大的项目还可以组织专家评议。

随着政府对企业投资项目的核准与备案行为逐渐规范化、效率化，企业投资自主权将进一步落实，也大大便利与简化了企业固定资产投资的流程。

requirements. Meanwhile, the Measures make it clear that approval authorities and other competent authorities shall focus on ex-post management and their service functions, and shall not illegally interfere with enterprises' autonomy in investments and shall not make unauthorized changes to the approval requirements. With respect to projects subject to filing requirements, the approval authority should mainly focus on investment intention of the projects and dynamic information of the project construction progress. For projects subject to government approvals, the scope of examination should be limited to the aspects of national security and material public interests. In the circumstance that a project is likely to exert significant impact on public interests, public comments shall be solicited in an appropriate manner, and for those extremely significant projects, the government may organize expert review and discussions in the examination process.

With the standardization and simplification of governments' administration on approval and filing of investment projects, enterprises' autonomy in investments will be further emphasized and the process of fixed asset investments will also be greatly streamlined.

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*For further information, please write us at [inquiry@hanyilaw.com](mailto:inquiry@hanyilaw.com).*

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## 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

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