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AMAC Released Draft Guidelines on Internal Control of Private Investment Fund Managers 基金业协会发布《私募投资基金管理人内部控制指引（征求意见稿）》

On November 24, 2015, the Asset Management Association of China ("AMAC") released the *Guidelines on Internal Control of Private Investment Fund Manager (Draft)* (the "Guidelines") for public comments, setting forth general principles for the operation, corporate governance structure, human resources policies and other aspects of management involving private investment fund managers ("Fund Managers").

The Guidelines require Fund Managers to operate in compliance with applicable laws and regulations, improve governance structure, establish risk assessment and asset isolation system, improve information disclosure system, and have senior

executives in general charge of compliance and risk control matters, etc. According to the Guidelines, Fund Managers shall file with AMAC's registration and filing system and upload the relevant internal control documents accordingly. AMAC will inspect Fund Managers' compliance status and in the case of a violation, may give or circulate a criticism notice within the industry or publicly. The Guidelines are still fairly general and only include principal terms. We will continue to follow up on detailed implementing rules once they become available.

2015年11月24日，中国证券投资基金业协会（“基金业协会”）发布了《私募投资基金管理人内部控制指引（征求意见稿）》

（“《指引》”），向行业公开征求意见。《指引》对私募投资基金管理人（“基金管理人”）的经营理念、治理结构、人力资源政策等方面作出了原则性规定。

《指引》提出基金管理人应树立合法合规经营的理念，健全治理结构，建立风险评估体系与财产分离制度，健全信息披露控制，设置负责合规风控的高级管理人员等。根据《指引》，基金管理人须在基金业协会登记备案系统填报并上传相关内部控制制度，基金业协会对基金管理人的合规情况进行业务检查，发现违反相关规则的，可采取书面警示、行业内通报批评、公开谴责等措施。此次《指引》中原则性规定居多，而未来基金业协会是否会制定配套的具体实施细则，我们将持续予以关注。

CAPITAL MARKET / 资本市场

CSRC Released Multiple Draft Rules to Accelerate IPO Registration Reform 证监会发布多项征求意见稿，加快推进股票发行注册制改革

On November 6, 2015, the China Securities Regulatory Commission ("CSRC") announced the re-launch of IPO and issued several draft rules for public comments such as the *Administrative Measures for Initial Public Offering and Listing of Shares (Draft)* and the *Administrative Measures for Initial Public Offering and Listing of Shares on ChiNext (Draft)* (collectively, the "Drafts"), in an effort to further streamline the IPO system in preparation of the long-expected IPO registration reform.

The stock offering registration system was first proposed in the Third Plenary Session of the 18th CPC Central Committee held in November, 2013, and was later clarified in CSRC's *Opinions on further Promote the Reform of Initial Public Offerings System* and a series of documents issued by the State Council and other central government departments. The revised draft of the *Securities Law* has confirmed introduction of IPO registration mechanism and was submitted to the initial review by the National People's Congress this April. Though the official release of the *Securities Law* has been delayed due to the turbulent capital market earlier this year, it has been reported that IPO registration is nonetheless likely to be launched in practice in 2016.

The Drafts include major revisions as follows:

(a) *Independence is no longer a mandatory requirement for public offerings*: The current IPO measures (namely, *Administrative Measures for Initial Public Offering and Listing of Shares* and the *Administrative Measures for Initial Public Offering and Listing of Shares on ChiNext*) require the issuer to have a high-level independence from its major stockholders and affiliates in terms of assets, personnel, finance, organizational structure and business. In practice, CSRC has been quite sensitive with related party transactions and non-compete matters as well and has disapproved many IPO applications because of independence defects. This proposed amendment has removed the aforesaid requirements and has only kept the relevant information disclosure provisions.

(b) *Limitations on use of proceeds have been lifted*: The current IPO measures require, as applicable, that the use of proceeds shall be generally in line with the issuer's primary business, the proceeds amount and proposed projects shall meet certain requirements, and the issuer shall set up a special deposit account to accept such proceeds. This proposed amendment has deleted such

requirements and similarly has only kept relevant terms on information disclosure.

It is worth noting that this round of revisions doesn't seem to indicate that CSRC intends to completely ignore the above requirements but instead it has reflected a change of CSRC's regulating approach towards the in-event and after-event supervision.

2015年11月6日，证监会在宣布IPO重启的同时，发布了《首次公开发行股票并上市管理办法（征求意见稿）》、《首次公开发行股票并在创业板上市管理办法（征求意见稿）》（合称，“《征求意见稿》”），向社会公开征求意见，拟借此完善新股发行制度。

受今年资本市场动荡的影响，《证券法》的修订及注册制的推出与原先的市场预期相比有所延迟，此次证监会发布的多项征求意见稿有助于股票发行向注册制改革进行过渡。2013年11月召开的党的十八届三中全会首次提出了推进股票发行注册制改革这一要求，随后在证监会发布的《进一步推进新股发行体制改革的意见》以及国务院及中央部委陆续发布的一系列文件中均再次明确了股票发行注册制改革的大方向。今年4月，作为股票发行的基石性法律，《证券法》修订草案进入全国人大一审，修订涉及我国证券市场法律的全方位改革，包括明确股票发行注册制。据报道，注册制或于2016年正式出台。

《征求意见稿》的具体修订内容体现在：

(a) 独立性不再作为上市条件，仅需进

行信息披露：目前的上市管理办法（即《首次公开发行股票并上市管理办法》和《首次公开发行股票并在创业板上市管理办法》）要求企业发行上市要做到资产完整，人员、财务、机构及业务等方面独立，对存在关联交易和同业竞争情形的企业的审核标准也较为严苛。在发行审核委员会的审核实践中，因为独立性方面的缺陷导致通不过

审核的上市申请不在少数。修订后，前述要求将不再成为发行人申请IPO必须符合的条件。

- (b) 募集资金用途不再作为上市条件，仅需进行信息披露：目前的上市管理办法要求募集资金原则上应用于主营业务，筹资额和投资项目也应符合一定的限制要求，同时要求设立募集资金的专项账户。修订后，

前述要求将不再成为发行人申请IPO必须符合的条件。

需注意的是，从具体的修改以及现有其他规定来看，删除独立性和募集资金使用条件等上市门槛并不意味着监管部门意图降低这些方面的监管标准，而是通过信息披露加强事中、事后的监管，体现了监管方式的转变。

PBOC and SAFE Issued Forex Policies of Mutually-Recognized Funds 中港基金互认外汇政策出台

After CSRC and the Securities & Futures Commission of Hong Kong jointly released the announcement to implement the mutual recognition of securities investment funds on July 1, 2015, the People's Bank of China ("PBOC") and the State Administration of Foreign Exchange ("SAFE") have recently issued the *Operating Guidelines for Fund Management during the Cross-Border Issuance and Sales of Mainland China and Hong Kong Securities Investment Funds* (the "Guidelines"), and specified relevant foreign exchange matters involved in funds mutual recognitions. The Guidelines have become effective from the date of the release.

The Guidelines have adopted a total quota approach and allowed the remittable (or repatriable) net amount of Hong Kong registered funds raised in Mainland China (or vice versa) to be capped at the equivalent amount of RMB300 billion at the initial stage. With respect to fund accounts and fund exchange policies, each Mainland China or Hong Kong fund needs to open a special account for

the raised proceeds in the name of the Mainland China/Hong Kong fund manager. Foreign currencies and RMB funds on such account are mutually transferable after foreign exchange settlement and purchase. Moreover, the Guidelines encouraged that the fund managers use RMB as the pricing and payment currency during the issuance and sales of such cross-border funds.

The Guidelines have further clarified implementing rules on the limit that funds raised during the Mainland China-Hong Kong cross-border issuance shall not exceed 50% of the total assets of the underlying funds as required in *Interim Administrative Provisions on Mutually-Recognized Funds of Hong Kong and the Circular on Mutual Recognition of Mainland China and Hong Kong Funds*. The Guidelines have also spelled out detailed rules in respect of account opening, fund exchange policies and other issues, among others. It is expected that the first set of mutually-recognized funds will be available to the public soon.

继中国证监会与香港证监会发布联合公告宣布自2015年7月1日起实施互认基金计划之后，2015年11月6日，中国人民银行与国家外汇管理局发布了《内地与香港证券投资基金跨境发行销售资金管理操作指引》（“《指引》”），旨在进一步规范内地与香港两地基金互认。《指引》自发布之日起施行。

根据《指引》，香港基金内地发行与内地基金香港发行的募集资金净流出规模上限初期均为等值3,000亿元人民币，即对互认基金采用总额度的管理模式，而不对单家机构或单只产品的额度进行监管。在募集资金账户和资金汇兑方面，每只内地/香港基金均需开立募集资金专用账户（人民币或/和外币账户），人民币募集资金专户与外币募集资金专户内的资金可结汇、购汇后相互划转。同时，《指引》鼓励跨境发行销售以人民币计价，使用人民币进行跨境收付。

此外，《指引》明确了《香港互认基金管理暂行规定》以及《有关内地与香港基金互认的通函》中关于单个互认基金异地发行募集资金规模原则上不得超过基金总资产50%的规定，以及互认基金在募集资金账户开立、资金汇兑等问题上的操作细则。首批产品将有望于近期落地。

FOREIGN INVESTMENT / 外商投资

MOFCOM Cleaned up Foreign Investment Regulations to Implement Subscription Based Capital Registration System 商务部对外商投资部门规章进行系统性清理，落实注册资本认缴制

On October 28, 2015, the Ministry of Commerce ("MOFCOM") issued the *Decision on Revising Certain Regulations and Normative Documents* (the "Decision"), to amend or abolish certain provisions involving some 29 regulations and normative documents, whereby it canceled the requirements and restrictions involving the minimum registered capital, time limit on capital contribution, among others. The Decision took effect upon promulgation.

This Decision was driven by the country's bid on transforming the long-implemented capital paid-in system to a much more relaxed subscription based capital registration system that

has been legislatively set forth in the amendments to the *Company Law* in December 2013. Typical requirements such as the minimum registered capital, time limit on capital contribution, and mandatory initial capital contribution are no longer required under the capital subscription system. Accordingly, as the major government authority in charge of foreign investment, MOFCOM has specifically deleted or revised relevant provisions involving such requirements or restrictions applicable to foreign investments in the Decision, which will be of positive significance to foreign investment practice in China.

Major revisions in the Decision include,

among others:

- (a) Requirements on minimum registered capital and capital contribution period (if applicable) concerning foreign-invested joint stock companies, foreign-invested venture capital enterprises, venture capital management enterprises, foreign-invested commercial enterprises, foreign-invested investment companies and foreign investments in certain special industries (logistics, leasing industry, international transport agency, etc.) have been removed;
- (b) Foreign invested enterprises are

no longer required to have the registered capital fully paid up before they can make domestic investments, conduct merger and separation, and they may also now accept equity contribution from other investors even if the corresponding registered capital is not fully paid up; and

- (c) Various miscellaneous revisions including: (i) the minimum percentage of 25% foreign investment in foreign-invested joint stock companies are no longer required; (ii) foreign-invested investment companies are no longer limited to limited liability companies, and joint stock companies are now also permitted; (iii) in respect of equity contribution to foreign-invested enterprises, abolish the requirement that the percentage of equity contribution (*together*

with other non-monetary contribution) shall not exceed 70% of the registered capital.

2015年10月28日, 商务部发布了《关于修改部分规章和规范性文件的规定》(“《决定》”), 对29部商务部规章和规范性文件的部分条款予以修改, 《决定》自发布之日起生效。

2013年12月修订的《公司法》废除了实行了20多年的公司注册资本实缴制, 改而实行注册资本认缴制。与实缴制相比, 认缴登记制的最大特点在于法律不再强制规定公司股东实际缴纳注册资本的时间和比例, 取消了一般性公司的注册资本最低限额, 同时公司实收注册资本也不再作为工商登记事项。商务部作为外商投资的主管政府部门, 此次修订的核心内容是删除相关条款中涉及最低注册资本、出资期限、首次出资比例、货币出资比例、验资报告及年检要求或限制的内容, 意在落实涉及外资的注册资本认缴制, 对外商投资近期的实务将会产生重要的积极影响。

《决定》的重点修订主要体现在:

- (a) 取消设立外资股份公司、外资创业投资企业、创投管理企业、外商投资企业、外商投资性公司以及部分特殊行业(包括外资物流、外资租赁业、外资国际货运代理等)的最低注册资本的要求以及出资期限(如适用)的限制;
- (b) 取消了外商投资企业在再投资、合并与分立之前需首先缴清该外商投资企业注册资本的要求。在外商投资企业股权出资方面, 取消了未缴足注册资本的企业股权不得用于出资的要求; 以及
- (c) 在设立外资股份公司方面, 取消外资出资比例不低于25%的要求。在外商投资性公司方面, 公司形式不再局限于有限责任公司, 可以设立股份制的外商投资性公司。在外商投资企业股权出资方面, 取消股权出资(连同其他非货币出资)累计不得超过注册资本70%的要求。

MOFCOM Cancelled Filing Procedure for Foreign-Invested Real Estate Enterprises

外商投资房地产取消备案公示程序

On November 6, 2015, MOFCOM and SAFE issued the *Notice on Further Improving the Filing of Foreign Investment in Real Estate* (the “Notice”), in an effort to simplify the administration over foreign-invested real estate enterprises (FIREEs), and cancel the filing requirement with MOFCOM and the public announcement procedure at MOFCOM’s website.

MOFCOM has since June 2014 released relevant policies to simplify filing procedures (*such as replace hardcopy filing with electronic filing*). This time the Notice has completely cancelled the filing requirement, and will expedite and streamline FIREE projects in practice. Foreign investors may, after obtaining approval from

competent MOFCOM offices, directly go through applicable foreign exchange registration procedures without the MOFCOM filing as was previously required since the real estate financing boom in 2007.

On the other hand, MOFCOM will strengthen ex post regulation and conduct random inspection over FIREEs on a quarterly basis. For the blacklisted FIREEs, strengthened inspection will apply in respect of their subsequent investments and other activities.

2015年11月6日, 商务部与国家外汇管理局联合发布了《关于进一步改进外商投资房地产备案工作的通知》(“《通知》”), 强调简化外商投资房地产企业管理工作, 并明确取消商务部网站备案公示程序。

早在2014年6月, 商务部就已发布相关政策明确简化备案程序, 将原先的纸质版备案改为电子数据备案和事中事后抽查。此次《通知》彻底取消了备案公示程序, 将大大缩短外商投资房地产交易项目的完成时间, 以往只能在完成商务部备案手续后才能进行资本项目的结售汇, 在新政策出台后, 外国投资者可在取得相关商务主管部门的审批后, 直接到银行办理外商直接投资项下外汇登记等手续。

此外, 为加强事后监管, 《通知》还提出商务部将每季度对外商投资房地产企业进行一次随机抽查, 对违规的企业及其投资者依法予以处罚, 列入“黑名单”, 在商务部网站予以公示, 并对其以后的投资等行为从严审查并加大随机抽查力度。

TAXATION / 税收

SAT Pledged to Implement Various Preferential Income Tax Policies 国家税务总局进一步落实若干所得税优惠政策

Following the joint notice by the Ministry of Finance and the State Administration of Taxation (“SAT”) last month, (*i.e.*, *Notice on Expanding Certain Tax Policies Carried Out in Various National Demonstration Zones of Independent Innovation on a Pilot Basis to the Entire Country*; please see the November 2015 issue of *Han Yi Monthly Newsletter* for more details), on November 16, 2015, SAT issued two additional announcements concerning the enterprise income tax

(EIT) applicable to the corporate limited partners of certain limited partnerships, individual income tax (IIT) of equity rewards, and IIT involving conversion of undistributed profits or equity surplus and clarified various application issues.

EIT deduction of a corporate partner: Under the previous joint released notice, 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 amounts. SAT’s new announcements defined such venture capitals and the relevant corporate partners, clarified the meaning of “more than 2 years”, and set forth specific requirements for filing procedures, etc.

IIT involved in equity rewards: SAT’s announcements specified that for equity rewards, the taxable income

shall be determined based on the fair market value when the equity options are given. Fair market value of listed companies' shares is the transaction price in open market, while the fair market value of private company's equity interest shall generally be determined by the company's net assets, or if this is unavailable, reasonable equity price in recent equity transactions, or such other methods after communicated with competent tax authorities, if the above two methods don't work out.

IIT on stock/equity interest issued by conversion of undistributed profits or reserves: (a) if a listed company or a company quoted on the National Equities Exchange and Quotations ("NEEQ") issues equity interest to its individual shareholders by conversion of undistributed profits, surplus reserves or capital reserves (excluding the situation where equity interest is converted from capital reserves accumulated by share premium), the IIT payable by the shareholder shall remain governed by the current differential IIT policies on dividends and bonuses, and this installment IIT payment policy as prescribed in the Announcement shall

not apply; (b) if a small and medium-sized high-tech enterprise is neither a listed company nor being quoted on the NEEQ, and issues converted equity interest to its individual shareholders, such individual shareholders can pay IIT in installments in 5 years; and (c) if other types of enterprises are neither listed companies nor being quoted on the NEEQ, and they issue converted equity interest, their shareholders shall pay IIT or have it withheld in a timely manner.

为贯彻落实上月发布的《财政部、国家税务总局关于将国家自主创新示范区有关税收试点政策推广到全国范围实施的通知》(“《通知》”)中的相关规定(详细内容请参见我所2015年11月刊 *China Regulatory Updates*)，国家税务总局于2015年11月16日发布了两项公告，进一步明确了有限合伙制创业投资企业法人合伙人的企业所得税、股权激励与转增股本的个人所得税政策的适用范围等相关问题。

在法人合伙人的企业所得税方面，此前《通知》提出2015年10月1日起有限合伙制创业投资企业采取股权投资方式投资于未上市的中小高新技术企业满2年的，其法人合伙人可按投资额的70%抵扣应纳税所得额。此次新发布的公告明

确了有限合伙制创业投资企业、法人合伙人的范畴，对“满2年”这一限制条件进行了定义，并在备案手续等方面提出了具体要求。

在股权激励的个人所得税方面，公告规定股权激励的计税价格主要是按照公平市场价格确定。上市公司股权的公平市场价格，按照其在公开市场的交易价格确定。至于非上市公司股权的公平市场价格一般情况下根据个人取得的股权份额所对应的企业净资产确定其公平市场价格。对于企业净资产无法确定的，可以通过最近一段时期企业股东转让股权时的合理转让价格类比确定。若净资产法和类比法都无法确定股权价格的，企业经与主管税务机关沟通，可通过其他合理方法确定股权价格。

在转增股本的个人所得税方面，(a)上市公司或在全国中小企业股份转让系统挂牌的企业转增股本(不含以股票发行溢价形成的资本公积转增股本)，按现行有关股息红利差别化政策执行；(b)非上市及未在全国中小企业股份转让系统挂牌的中小高新技术企业以未分配利润、盈余公积、资本公积向个人股东转增股本的，纳税人可分期缴纳个人所得税；(c)非上市及未在全国中小企业股份转让系统挂牌的其他企业转增股本，应及时代扣代缴个人所得税。

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