CHINA REGULATORY UPDATES

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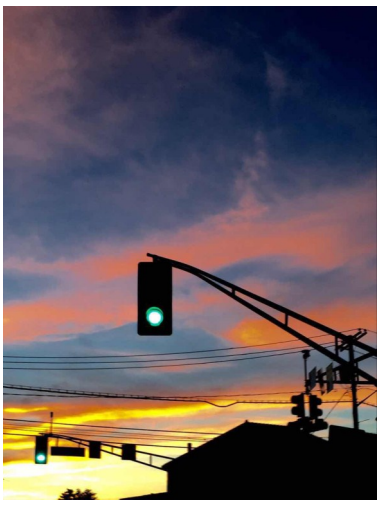

CAPITAL MARKET / 资本市场

CSRC Solicited Public Comments on Revision of Administrative Measures for Material Asset Reorganization of Listed Companies and Issued Two New "Questions and Answers"
证监会就修改《上市公司重大资产重组办法》公开征求意见并发布相关问题解答

On June 17, 2016, the China Securities Regulatory Commission ("CSRC") issued the *Decision on amending the Administrative Measures for Material Assets Reorganization of Listed Companies (Draft for comments)* (the "Draft" or the "Reorganization Measures") to solicit public opinions. To strictly control the actions of reverse take-over of listed companies by non-listed companies (or the back-door listing), the Draft has made the following major revisions:

(a) imposing strict identification criteria of backdoor listing: (i) the Draft includes four additional indicators in five aspects, including total assets, revenue, net profits, net assets and additional shares, replacing the single indicator of total assets. If any of the five indicators reaches the 100% threshold, the transaction would be regarded as back-door listing. Moreover, the Draft also adds the substantive criterion of fundamental change of main business and other situations identified by CSRC, thus strengthening the discretionary power of CSRC; (ii) the Draft clarifies that if the acquiring party injects more assets into the listed company after 60 months since the change of control of the listed company, it would not be deemed as back-door listing transaction; and (iii) the Draft perfects the criterion of "change of control": aside from the criteria of shareholding percentage and the constitution of the board of directors, the Draft also states that where the shareholding of the listed company is highly fragmented, directors and senior management who can make major financial and operational decisions of a listed company should be deemed as taking the controlling rights of the listed company.

(b) adding requirements on the listed companies to be acquired in back-door listings: if a party intends to carry out a back-door listing, the following requirements for the listed company should be satisfied: (i) the listed company, the controlling shareholders and the actual controller shall not be under investigation by the judicial organ for suspected crime or by the CSRC for alleged illegal behaviors, or it has been 36 months since they have terminated behaviors of suspected crime or behaviors violating rules and breaching promises, and they have not been condemned publicly by the stock exchange within recent 12 months and have no other major dishonesty behaviors; and (ii) there does not exist any other circumstances that could be deemed by CSRC as jeopardizing investors' interests or violating the principles of openness, impartiality and fairness of the securities market.

(c) further compressing the arbitrage room in back-door listing: (i) cancelling the ancillary fundraising in back-door listings to restrict relevant parties from sharing benefits through financing when carrying out back-door listings; and (ii) extending relevant lock-up periods in back-door listings: both of the existing and new shares in the listed company held by the original controlling shareholders, actual controller and their affiliates shall be locked up for 36 months and the lock-up term for other new shareholders is extended from 12 months to 24 months.

(d) enhancing accountability for circumvention of the back-door listing rules: for companies that have not completed transactions, CSRC can order the listed company to complete relevant information disclosure, suspend trading and file application documents in accordance with rules of back-door listing; for companies have completed transactions, CSRC can impose warnings or fines against the companies and prohibit the person in-charge from entry into the securities market. If any suspected crime is involved therein, the case will be transferred to the judicial organ by CSRC.

Reorganization Measures will delimit a time range for the on-going backdoor listings when implemented. Namely, for any restructuring and listing plan which has been approved by the general meeting when the new rules become effect, the plan shall be disclosed, examined and approved according to the previous back-door listing rules, while those that fail to pass the shareholders' meeting after the new rules are implemented shall adhere to the new ones.

On the same day, CSRC also published *the Questions and Answers Concerning Listed Company Acquiring Assets through Share Issuance while Raising Supporting Funds* (the "Supporting Funds Q&A") as well as *Questions and Answers Concerning Performance Compensation Undertakings of Listed Companies* (the "Performance Compensation Undertakings Q&A").

The Supporting Funds Q&A mainly includes the following contents:

(a) as for the provision of "the raised supporting funds when the listed company issue new shares to acquire the assets shall not exceed 100% of the transaction price, which will all be reviewed by the acquisitions and reorganization committee", the "transaction price" does not include the transaction price corresponding to part of the underlying assets invested by the counterparty in cash 6 months before or during the trading suspension caused by such transaction. This provision will block the operational path of speculators from suddenly investing the underlying assets to increase the amount of fundraising. Were the Draft to be formally implemented, such provisions would not apply to the back-door listing transactions involving issuance of shares to purchase assets, as ancillary fundraising is not allowed in back-door listings.

(b) in determining whether a change of control of the listed company has been caused and thus the transaction constitutes a back-door listing: where the controlling shareholders, the actual controller and persons acting–in-concert propose to participate in the ancillary fundraising, the corresponding shares acquired therefrom shall be excluded in the calculation; such calculation method would also apply to the case where the aforementioned parties purchase target assets 6 months before or during the trading suspension caused by such transaction and subscribe

for shares of the listed company with such target assets. This provision would limit the operation to circumvent back-door listing regulation by maintaining the original controlling shareholder's controlling position so as to avoid being deemed as "change of control". Would the Draft be formally implemented, such provision would only apply to the situation where the aforementioned parties purchase the target assets within the aforesaid time period and subscribe for shares of the listed company with such assets, as ancillary fundraising is not allowed in back-door listings.

(c) the raised supporting funds can only be used to pay cash consideration of transaction and fees for this merger, acquisition and integration, such as taxes and employee settlement and to invest in the under-constructed projects of the underlying assets, and shall not be used to supplement the working capital or to repay debts of the listed company or underlying assets.

Performance Compensation Undertakings Q&A points out that the parties of material assets reorganization transaction of listed company shall strictly perform their performance compensation undertakings in a material assets reorganization and shall not apply section 5 of *the Fourth Regulatory Guidelines for Listed Companies – Undertakings and Performance of the Actual Controller, Shareholders, Affiliates, Acquirer of the Listed Company and the Listed Company* to alter such undertakings.

CSRC introduces the above new rules of material assets reorganization to curb the variety of operations to circumvent the existing back-door listing regulations. The revisions make more stringent regulatory requirements on identification criteria, ancillary fundraising activities, lock-up period of shares and tracing mechanism for liabilities. Such new regulations would, on one hand, help to curb speculations on shell resources, normalize market conducts and promote survival of the fittest, but on the other hand, may restrict parties' enthusiasm for engaging in reorganization of listed companies. As far as private funds are concerned, as ancillary fundraising in back-door listing transactions are not allowed in the Draft, in future, they would not be able to participate in back-door listing transactions through supporting financing when new rules are implemented. Moreover, it may become more difficult for the private funds acquiring shares of a listed company through back-door listing to exit due to the extension of lock-up term from 12 months to 24 months. In view of the above, the new regulations may need to be further considered in order to strike a balance between regulation of market conducts and maintenance of the market participants' activity level.

2016年6月17日，中国证券监督管理委员会（"证监会"）发布《关于修改<上市公司重大资产重组管理办法>的决定（征求意见稿）》（"《征求意见稿》"或"《重组办法》"）向社会公开征求意见。为严控非上市公司反向收购上市公司的行为（"借壳上市"），《征求意见稿》主要针对性地做出了以下几个方面的修改：

(a) 完善借壳上市认定标准：(i) 《征求意见稿》将原有的资产总额单项指标调整为：资产总额、营业收入、净利润、资产净额、发行股份等五个量化指标，只要其中任一指标达到100%以上，就认定符合交易规模要件；此外，还增设了"主营业务发生根本变化"的指标和"中国证监会认定的其他情形"这一兜底指标，加大了证监会的裁量权；(ii) 明确首次累计原则的期限为60个月（即，收购方取得上市公司控制权60个月之后再进行资产注入的，将不构成借壳）；以及(iii) 明确"控制权变更"的认定标准：除规定了股本比例、董事会构成等判断标准外，还明确了管理层控制标准（即，如上市公司股权分散，董事、高级管理人员可以支配公司重大的财务和经营决策的，视为具有上市公司控制权）。

(b) 增加对壳资源的限制：拟借壳上市的，(i) 上市公司及其控股股东、实际控制人不存在因涉嫌犯罪正被司法机关立案侦查或涉嫌违法违规被中国证监会立案调查的情形，或者涉嫌犯罪或违法违规的行为终止已满36个月；上市公司及其控股股东、实际控制人最近12个月内未受到证券交易所公开谴责，不存在其他重大失信行为；以及(ii) 不存在证监会认定的可能损害投资者合法权益，或者违背公开、公平、公正原则的其他情形。

(c) 进一步遏制借壳上市套利空间：(i) 取消借壳上市的配套融资，限制了市场主体通过参与配套融资分享借壳上市的利益；以及(ii) 延长借壳上市交易中的锁定期：上市公司原控股股东、实际控制人及其控制的关联人在该上市公司中拥有权益的股份（包括老股和新股）要求锁定36个月，其他新进入股东的锁定期从目前12个月延长到24个月。

(d) 增加对规避借壳规则的追责：规避借壳上市规定的，交易尚未完成的，证监会有权责令上市公司补充披露相关信息、暂停交易并按照借壳上市的规定报送申请文件；交易已经完成的，可以处以警告、罚款，并对有关责任人员采取市场禁入的措施。构成犯罪的，依法移送司法机关。

在规则适用方面，《重组办法》的过渡期安排将以股东大会为界进行划分，即：修改后的《重组办法》发布生效时，重组上市方案已经通过股东大会表决的，原则上按照原规定进行披露、审核，其他情形则按照新规定执行。

同日，证监会还发布了《关于上市公司发行股份购买资产同时募集配套资金的相关问题与解答》（"《配套资金解答》"）和《关于上市公司业绩补偿承诺的相关问题与解答》（"《业绩补偿承诺解答》"）。

《配套资金解答》主要内容包括：

(a) "上市公司发行股份购买资产同时募集的部分配套资金，所配套资金比例不超过拟购买资产交易价格100%的，一并由并购重组审核委员会予以审核"中，"拟购买资产交易价格"不包括交易对方在本次交易停牌前六个月内及停牌期间以现金增资入股标的资产部分对应的交易价格。该条规定限制了以突击增加标的资产价格的方式提高配套资金数额的做法。如《征求意见稿》正式实施，由于借壳上市不允许配套融资，该规定仅适用于不构成借壳上市的发行股份购买资产；

(b) 在认定是否构成借壳上市时：上市公司控股股东、实际控制人及其一致行动人拟认购募集配套资金的，相应股份在认定控制权是否变更时剔除计算；前述各方在交易停牌前六个月内及停牌期间取得标的资产权益的，以该部分权益认购的上市公司股份，按前述计算方法予以剔除。该条限制了实践中上市公司原控股股东为维持大股东地位、避免被认定为"控制权变更"，从而规避借壳上市规则的操作。如《征求意见稿》正式实施，由于借壳上市不允许配套融资，因此该等规定仅限制的是前述各方在交易停牌前六个月内及停牌期间取得标的资产权益，并以该部分权益认购上市公司股份；以及

(c) 配套资金仅可用于支付本次并购交易中的现金对价、交易税费、人员安置费用等并购整合费用、投入标的资产在建项目建设；不得用于补充上市公司和标的资产流动资金、偿还债务。

另外，《业绩补偿承诺解答》指出：上市公司重大资产重组中，重组方应当严格按照业绩补偿协议履行承诺。重组方不得适用《上市公司监管指引第4号——上市公司实际控制人、股东、关联方、收购人以及上市公司承诺及履行》第五条的规定，变更其作出的业绩补偿承诺。

以上重大资产重组新规针对目前实践中

规避上市公司重大资产重组规范的种种操作，从完善借壳上市认定标准、取消/限制配套融资、延长持股锁定期、加大处罚力度等方面严控借壳上市，将有助于降温壳资源炒作情况，规范市场行为，促进优胜劣汰；但从另一角度讲也有可能限制各方参与上市公司重组的积极性。就私募基金而言，《征求意见稿》不允许借壳上市配套融资，因此在新规实施后私募基金将无法通过这一途径参与借壳上市。另外，如果私募基金是持有拟借壳标的公司股权的小股东，由于锁定期将从目前的12个月延长到24个月，其退出将更为困难。因此，新规仍需进一步在规范市场行为和保持市场主体积极性之间寻找平衡。

FOREIGN EXCHANGE / 外汇

SAFE Reforms and Regulates Control over Capital Account Forex Settlements
外汇局发文进一步改革规范资本项目结汇管理制度

To further deepen the reform of the foreign exchange management system, better facilitate the need of operation and capital operation of domestic enterprises, and promote the facilitation of cross-border investment and financing, on June 9, 2016, the State Administration of Foreign Exchange ("SAFE") promulgated *the Circular on Reforming and Regulating Policies on the Control over Foreign Exchange Settlement of Capital Accounts* (Hui Fa (2016) No. 16, the "Circular"), with effect as of the date of promulgation. The Circular mainly covers the following contents:

(a) implementing the discretionary foreign exchange or forex settlement of foreign debts on a nationwide basis, as a result of which all onshore non-financial enterprises including foreign-invested enterprises ("FIE") are allowed to choose at will the timing and amount for the settlement of foreign debts into RMB; (b) unifying policies on discretionary forex settlement of all kinds of capital account incomes (including FIE registered capital, repatriated funds raised from overseas listings and foreign debt funds); (c) specifying that a unified negative list shall be adopted and applied to the use of all kinds of capital account incomes, and lifting the previous restrictions on RMB entrusted loans to affiliates, repayment of inter-company loans (including third-party advances) and repayment of RMB bank loans that have been re-lent to third parties with RMB converted from foreign exchange as provided under the negative list of *the Circular of the State Administration of Foreign Exchange Concerning Reform of the Administrative Approaches to Settlement of Foreign Exchange Capital of Foreign-Invested Enterprises* (the "Circular 19"); and (d) further strengthening interim and ex post management and regulation on FX settlement.

We have noted that even after Circular 19 has been issued, in practice, some banks still reject FIEs from making onshore equity investment with the converted RMB from their capital accounts on the ground that the business scope of such FIEs does not include "equity investment" and the Circular 19 prohibits FIEs from, directly or indirectly, using RMB converted from registered capital for expenditures beyond business scope. Though the aforesaid limitation languages still exist in the negative list of the Circular, it adds a general provision therein stating that "foreign exchange incomes and settled RMB funds under capital accounts can be used for payments under current accounts that are within the enterprise's business scope and payments under capital accounts that are permitted by laws and regulations." This seems to suggest that capital account payments are only subject to relevant laws and regulations rather than its business scope. It remains to be seen, however, whether the settled funds can be used for domestic equity investment under current policy.

为进一步深化外汇管理体制改革，更好地便利境内企业经营与资金运作需要，促进跨境投融资便利化，2016年6月9日，国家外汇管理局（"外汇局"）发布了《关于改革和规范资本项目结汇管理政策的通知》（汇发(2016)16号，"《通知》"），自发布之日起生效。《通知》的主要内容包括：

(a) 全面实施外债资金意愿结汇管理，境内企业（包括内资企业和外商投资企业,不含金融机构）可自由选择外债资金结汇时机和金额；(b) 统一境内机构资本项目外汇收入意愿结汇政策：境内机构可根据需要对包括资本金、境外上市调回资金和外债资金在内的资本项目外汇收入办理结汇；(c) 明确对资本项目收入的使用实施统一的负面清单管理模式；取消《国家外汇管理局关于改革外商投资企业外汇资本金结汇管理方式的通知》（"19号文"）下的结汇资金不得用于向关联企业提供人民币委托借款、偿还企业间借贷（含第三方借贷）以及偿还已转贷予第三方的银行人民币贷款的规定；以及(d) 外汇局加强事中事后管理，进一步强化事后监管与违规查处。

我们注意到，19号文颁布后，实践中有银行依据19号文中有关"不得直接或间接用于企业经营范围之外的支出"的规定，以企业经营范围不包含"股权投资"为由拒绝一般性外商投资企业以资本金结汇资金进行境内股权投资。虽然《通知》在其负面清单中仍保留了19号文下的上述限定性表述，但其增加了如下原则性的表述："资本项目外汇收入及其结汇所得人民币资金，可用于自身经营范围内的经常项下支出，以及法律法规允许的资本项下支出"，似意味着结汇资金"用于资本项下支出"的，仅受法律法规的限制，而非自身经营范围。在现行政策下，对于资金结汇能否用于境内股权投资的问题，仍有待实践的进一步明确。

PRIVATE FUNDS / 私募基金

Foreign Private Securities Fund Manager Registration Policies Issued
外资私募证券基金管理机构登记政策出台

On June 30, 2016, the China Securities Regulatory Commission ("CSRC") clarified that eligible private securities fund management institutions wholly owned by foreign investors or jointly held by Chinese and foreign investors (the "Foreign Private Securities Fund Management Institutions") are allowed to undertake the business of private securities fund management in China. CSRC pointed out that, foreign institutions applying to operate such business, shall set up organizations in China, to non-publicly raise funds within the country and invest in the Chinese capital market, providing assets management services for qualified Chinese investors without involving any cross-border capital movements.

On the same day, Asset Management Association of China ("AMAC") published Questions and Answers concerning qualifications and registrations and record-filings of Foreign Private Securities Fund Management Institution ("Q&A"). With respect to the qualifications, Q&A states that (i) Foreign Private Securities Fund Management Institutions shall be incorporated in China; (ii) the foreign shareholders thereof shall be financial institutions duly approved or licensed by the financial regulator of the countries or areas where they domicile, and the securities regulatory authorities shall have entered into the memorandums of understanding for securities regulatory cooperation with CSRC or other institutions recognized by CSRC; (iii) neither the Foreign Private Securities Fund Management Institutions nor their foreign shareholders have been imposed with any material punishment by any regulatory authority or judicial institutions within the preceding three years. With respect to business operation, besides *Securities Investment Funds Law*, *Interim Measures for the Supervision and Administration of Private Investment Funds*, *Measures for the Registration of Private Investment Fund Managers and Record-filing of Funds (for Trial Implementation)* and other laws and regulations, the Foreign Private Securities Fund Management Institutions should also comply with the rules of foreign exchange authorities. Meanwhile, the Foreign Private Securities Fund Management Institutions shall make investment decisions independently and shall not place trading orders through offshore institutions or foreign-based systems, except as otherwise stipulated by CSRC.

Due to lack of explicit rules on permitted percentage of foreign shares, no wholly foreign owned or foreign controlled private securities fund management institutions have been successfully registered with AMAC so far. This change of explicitly allowing wholly foreign owned institutions to conduct private securities fund management business is a breakthrough in supervision and regulation of this industry. However, whether relevant registration could be done successfully and smoothly with AMAC still remains to be seen in practices.

2016年6月30日，中国证券监督管理委员会（"证监会"）明确了允许符合条件的外商独资和合资私募证券基金管理机构（"外资私募证券基金管理机构"）从事境内私募证券基金管理业务的政策。证监会指出，外资机构在境内开展私募证券基金管理业务，需在境内设立机构，在境内非公开募集资金，投资境内资本市场，不涉及跨境资本流动。

同日，中国证券投资基金业协会（"基金业协会"）公布了关于外资私募证券基金管理机构的有关资质和登记备案的问答（"问答"）。就资质而言，问答指出：(i) 外资私募证券基金管理机构须为在中国境内设立的公司； (ii) 其境外股东为所在国家或者地区金融监管当局批准或许可的金融机构，且该国家或者地区的证券监管机构已与中国证监会或者中国证监会认可的其他机构签订证券监管合作谅解备忘录；以及 (iii) 该管理机构及其境外股东最近三年没有受到监管机构和司法机构的重大处罚。就开展业务而言，除应当符合《证券投资基金法》、《私募投资基金监督管理暂行办法》、《私募投资基金管理人登记和基金备案办法（试行）》及其他法律法规规定外，还应当遵守外汇部门的相关规定，同时应当独立进行投资决策，不得通过境外机构或者境外系统下达交易指令（另有规定除外）。

此前由于缺乏明确的相关外资股比规定，尚没有外商独资或控股的私募证券基金管理机构获得基金业协会的登记备案。此次明确允许外商独资开展私募证券基金管理业务是对该领域监管的一项重大突破。但今后外商独资或控股的私募证券基金管理机构能否如预期顺利实现在基金业协会备案登记仍有待后续实践检验。

STATE-OWNED ASSETS REGULATION / 国有资产管理

Measures for the Supervision and Administration of Enterprise State-Owned Asset Transactions Released
企业国有资产交易监督管理办法发布

On July 1, 2016, the State-Owned Asset Supervision and Administration Commission of the State Council and the Ministry of Finance jointly released *the Measures for the Supervision and Administration over the Trading of Enterprise State-Owned Assets* (the "Measures" or "Circular 32"), aiming at normalizing state-owned asset transactions, strengthening regulation and supervision and preventing state-owned assets drainage. The Measures take effect since promulgation.

It is noteworthy that: (i) the Measures have clarified three types of trading of state-owned assets in enterprises, namely, property rights transfer, capital increase and assets transfer; (ii) the Measures have explicitly provided the scope of enterprises regulated thereunder, namely, the state-owned enterprises, the state holding enterprises and the enterprises with actual state control, and the definitions of such three types of enterprises; (iii) similar to property rights transfer, the Measures have stipulated that capital increase and assets transfer shall also be conducted publicly in property rights transaction agencies, and the Measures also have listed the limited circumstances where the equity transfer and capital increase could be conducted non-publicly; and (iv) the Measures set out detailed provisions on approval authorities, transaction procedures and pricing principles.

Circular 32 is a breakthrough in state-owned assets transaction regulation, which strengthens assets trading regulation and information disclosure and provides normalization methods for state-owned assets trading from a number of perspectives with strong operability. Circular 32, however, fails to provide answers to questions such as how to apply the requirements on capital increase when a state holding listed company proposes to issue new shares. Solutions to questions of similar nature remain to be figured out in practice.

2016年7月1日，国务院国有资产监督委员会、财政部联合发布《企业国有资产交易监督管理办法》（"《办法》"或"32号文"），旨在规范企业国有资产交易行为，加强监管，防止国有资产流失。《办法》自发布之日起施行。

《办法》主要包括以下几个值得注意之处：(i) 明确了企业国有资产交易行为包括企业产权转让、增资、资产转让三个方面；(ii) 明确规定了受监管企业的范围，即"国有企业"、"国有控股企业"以及"国有实际控制企业"三类国企，以及该三类国企的含义；(iii) 除产权转让外，《办法》规定增资及资产转让也应当在产权交易机构公开进行；《办法》同时列举了产权转让及增资可非公开进行的有限情形；以及(iv) 对各交易情形的审批权限、交易流程及定价原则进行了详细规定。

32号文对规范国有企业资产交易进行了多方位的规范，强化资产交易管理与信息披露，可操作性强，是一项具有突破性的法规。但对于诸如国有控股的上市公司发行股票如何与《办法》中关于三类国企增资的监管进行衔接等问题，32号文并未进行明确规定，具体处理方法仍有待实践明确。

ANTI-MONOPOLY / 反垄断

Public Comments Sought for Guidelines on Identification of Illegal Proceeds of Operators by Monopolistic Practices and Determination of Fines
《认定经营者垄断行为违法所得和确定罚款的指南》征求意见

Recently, the National Development and Reform Commission ("NDRC") has issued the *Guidelines on the Identification of Illegal Proceeds of Operators by Monopolistic Practices and the Determination of Fines (Draft for Comment)* (the "Guidelines") to seek public comments from June 17, 2016 to July 6, 2016.

The Guidelines only apply to concluding and implementing monopoly agreements and acts of abusing dominant market position but not illegally implementing concentration of undertakings. The Guidelines provide an analytical framework and some basic methods, through which the anti-monopoly law enforcement authorities may identify the illegal proceeds obtained by such operator and determine the fine to be imposed on the same for the aforesaid acts. The Guidelines have specified that the anti-monopoly law enforcement authorities usually consider, among others, the changes of commodity price, sales volume, operator's share of relevant market, operator's profit ratio and industry characteristics and may utilize economic methodology to do relevant analysis when necessary. With respect to determination of fines, the Guidelines have clarified relevant definitions in fine calculation, the basic rates for different kinds of monopoly agreements as well as lenient and severer circumstances for fine rates adjustments.

The Guidelines reflect the recent practices of the anti-monopoly law enforcement authorities and will help to promote the transparency, predictability and scientificity of enforcement. NDRC has, since the beginning of 2016, published several drafts for public comments in relation to anti-monopoly law, indicating the gradual improvement of anti-monopoly law system and NDRC's attaching great importance to anti-monopoly law enforcement. Therefore, enterprises are well advised to handle anti-monopoly issues more prudently.

近日，国家发展和改革委员会（“发改委”）公布了《<关于认定经营者垄断行为违法所得和确定罚款的指南>（征求意见稿）》（“《指南》”），向社会公开征求意见。此次征求意见的时间为2016年6月17日至2016年7月6日。

《指南》的适用范围仅限于达成实施垄断协议和滥用市场支配地位的情况，不包括违法实施经营者集中的罚款确定。

《指南》为反垄断执法机构在查处前述案件时，如何认定违法所得和确定罚款提供了分析框架和基本方法。《指南》明确，反垄断执法机构认定违法所得时通常会综合考虑因实施垄断行为导致的相关商品价格变化、销售量变化、经营者在相关市场的份额变化、经营者的利润率变化以及行业特点等因素，必要时借助经济学方法进行分析。罚款方面，《指南》明确了罚款计算中相关概念的界定、实施不同类型垄断协议的基础罚款比例以及等调整基础罚款比例的从重从轻情节等。

《指南》反映了近年反垄断执法机构的执法实践，将有助于提高执法的透明度、可预测性和科学性。2016年上半年以来，发改委陆续发布了数个反垄断法相关指南的征求意见稿，体现了反垄断法规体系的逐步完善以及执法部门对反垄断工作的重视。因此，企业在经营过程中应更加审慎地处理反垄断相关问题。

INSURANCE / 保险

Administrative Measures for Indirect Investments by Insurance Funds in Infrastructure Projects Issued
保监会发布保险资金间接投资基础设施项目管理办法

The China Insurance Regulatory Commission ("CIRC") has recently issued the revised *Administrative Measures for Indirect Investments of Insurance Funds in Infrastructure Projects* (the "Measures") with effect as of August 1.

Compared with pilot measures released by CIRC in 2006, major changes under the Measures include: (i) relevant administrative licensing is no longer required: the Measures deleted the items previously subject to licensing such as the examination and approval of business qualifications of the relevant parties, the filing of the issuance of investment plans and products, and the examination and approval of investment matters of insurance institutions; (ii) expanding the investment scope to include more industries in which insurance funds could be invested in and including Public-Private Partnership (PPP) as a feasible investment model; (iii) strengthening risk management and control by further improving the duties of the relevant parties, and establishing trustees risk responsibility system, net capital management mechanism and risk reserve mechanism; and (iv) perfecting the information disclosure system by integrating the requirements for contents and subjects of information disclosure.

近日，保监会修订发布了《保险资金间接投资基础设施项目管理办法》（“《办法》”），自8月1日施行。

与保监会在2006年发布的相关试点办法相比，《办法》修订的内容主要包括：(i) 取消相关当事人业务资质审批、投资计划产品发行备案、保险机构投资事项审批等许可事项；(ii)放宽保险资金可投资基础设施项目的行业范围，增加政府和社会资本合作（PPP）等可行投资模式；(iii)进一步完善相关当事人职责，建立受托人风险责任人机制、净资本管理机制和风险准备金机制；以及(iv)整合信息披露内容和披露主体的要求，规范信息披露行为。

CIVIL LAW / 民法

DRFAT Civil Law General Provisions Submitted to the NPC Standing Committee for Deliberation
民法总则（草案）提交人大常委会审议

On June 27, 2016, the 21st session of the 12th National People's Congress ("NPC") Standing Committee for the first time has deliberated the motion description of "*the People's Republic of China Civil Law General Provisions (Draft)*" (the "Draft").

According to the reports in official website of NPC, the Draft is divided into 11 chapters, with 186 provisions in total, and includes the following major proposed revisions, among others: (i) period of general statute of limitations is extended from two years to three years; (ii) non-corporate organizations are added as civil subjects, including individual proprietorship enterprises, partnerships and branches established by legal persons, and legal persons are divided into for-profit ones and non-for-profit ones; (iii) stipulations of protecting virtual properties including data information are newly added; (iv) restoration of the ecological environment, a new civil liability form, is stipulated; (v) the age limit of the person with limited capacity for civil conduct is changed from 10 years old to 6 years old; (vi) rights of fetus should be protected. As the general provisions of the Civil Code, after deliberated by the Standing Committee, the General Provisions Draft is expected to be submitted for approval at the 5th session of the 12th NPC in March 2017.

2016年6月27日,十二届全国人大常委会第二十一次会议首次审议了全国人大常委会委员长会议提请审议的《中华人民共和国民法总则（草案）》（"《草案》"）议案的说明。

根据全国人民代表大会官方网站报道，《草案》分为十一章,共一百八十六条，包含以下几个亮点：普通诉讼时效由两年延长为三年；新增非法人组织为民事主体（包括个人独资企业、合伙企业、法人依法设立的分支机构等），并将法人分为营利性法人和非营利性法人两种；增加保护虚拟财产（包括数据信息）的规定；增加修复生态环境的责任方式；限制民事行为能力人年龄下限标准由十周岁下调到六周岁；明确胎儿利益保护等。民法总则作为民法典总则编，经全国人大常委会审议后，预计将被提请由2017年3月召开的十二届全国人大第五次会议审议通过。

INDUSTRY REGULATIONS / 行业法规

Administrative Measures for Bank Card Clearing Agencies Issued
《银行卡清算机构管理办法》印发

For the purpose of implementing the *Decision of the State Council on the Implementation of Access Control concerning Bank Card Clearing Agencies* issued in April, 2015 (the "Decision"), on June 7, 2016, the People's Bank of China and China Banking Regulatory Commission jointly promulgated the *Administrative Measures for Bank Card Clearing Agencies* (the "Measures"), which becomes effective since promulgation.

The Measures detail conditions for access control concerning bank card clearing agencies set out in the Decision (including minimum registered capital amount, qualified directors and officers, among others). The Measures also clarify that both eligible domestically invested enterprises and foreign invested enterprises may apply to become bank card clearing agencies, and make the same stipulations for both domestically invested enterprises and foreign invested enterprises in establishment conditions, handling procedures and business management. In addition, the Measures detail the regulatory requirements for offshore agencies that have no onshore presence and only provide bank card clearing services settled in foreign currency for cross-border transactions, and specify that such offshore agencies shall fulfill the relevant business management requirements and their reporting obligations.

为落实国务院于2015年4月发布的《关于实施银行卡清算机构准入管理的决定》（"《决定》"），中国人民银行会同中国银行业监督管理委员会于2016年6月7日发布了《银行卡清算机构管理办法》（"《办法》"），自发布之日起实施。

《办法》细化了国务院《决定》中银行卡清算机构准入管理的各项条件（注册资本不低于10亿元人民币、具有相应资质的董事及高管等），明确了符合条件的内外资企业均可申请成为银行卡清算机构，并在机构设立条件、办理程序、业务管理等方面对外资和内资银行卡清算机构作出了相同规定。《办法》还细化了对不在境内设立清算机构、仅为跨境交易提供外币银行卡清算服务的境外机构的监管要求，明确规定其应遵守有关业务管理要求并履行报告义务。

State Internet Information Office Issued New Administrative Provisions on APPs
国家网信办发布APP管理新规

In order to tighten the regulation on mobile internet applications ("APP") information services, on June 28, 2016, the State Internet Information Office issued the *Administrative Provisions on Mobile Internet Applications Information Services* (the "Provisions") for implementation as of August 1.

The Provisions have specified the responsibilities and obligations of the mobile internet application providers (the "APP Providers") and internet application store service providers (the "APP Store Service Provider") respectively. According to the Provisions, the APP Providers shall fulfill such obligations as verification of a registered user's identity, protection of users data and record-keeping of a user's activity. With respect to the APP Store Service Providers, the Provisions require them to systematically examine the APP Providers' credentials, security and legal compliance status and procure users' information is protected by the APP Providers and any contents published in APPs comply with law. Moreover, the Provisions have

stipulated that the APP Providers shall obtain relevant qualifications required by applicable laws and regulations in order to provide APP information services, and the APP Store Services Providers shall file with the local provincial Internet Information Office within 30 days after they have started the online businesses.

为加强对移动互联网应用程序（“APP”）信息服务的规范管理，国家互联网信息办公室于2016年6月28日出台了《移动互联网应用程序信息服务管理规定》（“《规定》”），自8月1日起施行。

《规定》明确了互联网应用程序提供者（“APP提供者”）和互联网应用商店服务提供者（“APP商店服务提供者”）的责任和义务。针对APP提供者，《规定》要求其履行真实身份信息认证、用户信息安全保护、用户日志信息记录保存等义务。针对APP商店服务提供者，《规定》要求其履行对APP提供者进行真实性、安全性、合法性等审核、保护用户信息、督促APP提供者发布合法信息内容等责任。此外，《规定》还指出，通过APP提供信息服务，应当依法取得法律法规规定的相关资质；从事APP商店服务，还应当在业务上线运营30日内向所在地省级互联网信息办公室备案。

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