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FOREIGN INVESTMENT / 外商投资

Shanghai and Shenzhen Free Trade Zones Relaxed Restrictions on Foreign Exchange Settlement under Capital Accounts of Foreign-Invested Enterprises for Domestic Equity Investments 上海、深圳自贸区放开外商投资企业外汇资本金结汇用于境内股权投资的限制

2019年7月12日，国家外汇管理局上海分局发布了《关于印发<进一步推进中国（上海）自由贸易试验区外汇管理改革试点实施细则（4.0版）>的通知》（“《实施细则4.0》”）；2019年7月30日，国家外汇管理局深圳市分局发布了《关于印发<深入推进中国（广东）自由贸易试验区深圳前海蛇口片区外汇管理改革试点实施细则>的通知》（“《深圳实施细则》”）。两地的实施细则均明确允许上海自贸区及广东自贸区深圳前海蛇口片区内非投资性外商投资企业在真实、合规的前提下，按实际投资规模将外汇资本金等资本项目外汇收入或结汇所得人民币资金用于境内股权投资，突破了现行法律法规和实践下非投资性质的外商投资企业不能将资本金结汇用于境内股权投资的限制。

值得注意的是，福建自贸区在去年即已开展了非投资性的外商投资企业资本金结汇可用于境内股权投资的试点，但适用的企业仅为台资企业。而上述两地的细则并未对适用的外商投资企业提出资格限制。类似试点政策是否会推广到其他地区甚至全国，我们将持续关注。

On July 12, 2019, the Shanghai Branch of the State Administration of Foreign Exchange (SAFE) issued the *Notice on Issuance of the Implementing Rules for the Further Promotion of the Pilot Program of Foreign Exchange Administration Reform in China (Shanghai) Pilot Free Trade Zone (version 4.0)* (the “Shanghai Rules”). The Shenzhen Branch of the SAFT published the *Notice on Issuance of the Implementing Rules for the Further Promotion of the Pilot Program of Foreign Exchange Administration Reform in Qianhai & Shekou Area of Shenzhen, China (Guangdong) Pilot Free Trade Zone* (the “Shenzhen Rules”) two weeks later. Both of the Shanghai Rules and the Shenzhen Rules allow the general foreign-invested enterprises (FIEs) located in Shanghai Pilot Free Trade Zone and Qianhai & Shekou area of Shenzhen to use foreign exchange funds under their capital accounts or RMB funds settled therefrom to make domestic equity investments, which activities are previously restricted for non-investment type of FIEs under current prevailing practice.

It is noteworthy that, similar pilot programs have been implemented in Fujian Free Trade Zone since 2018, under which only Taiwan-funded FIEs are allowed to use capital account funds for domestic equity investments. By contrast, there are no such qualification requirements for FIEs under either the Shanghai Rules or the Shenzhen Rules. It remains to be seen whether similar policies will be adopted and implemented by other regions and even nationwide.

EDUCATION / 教育

China Published First Guideline Governing Online After-School Training 我国首部专门针对校外线上培训的规范性文件出台

2019年7月12日，教育部等六部门联合印发《关于规范校外线上培训的实施意见》（“《实施意见》”）。《实施意见》的规范对象为面向中小学生、利用互联网技术实施的学科类校外线上培训活动（“校外线上培训”），并提出对校外线上培训机构实施备案审查制度，校外线上培训机构应在取得ICP备案、电信业务经营许可（涉及经营电信业务的）等资质许可及有关数据处理与网络安全的说明材料后，向其住所地的省级教育行政部门申请备案。此外，《实施意见》还要求省级教育行政部门会同多部门在今年年底之前完成对校外线上培训机构的备案排查，有问题的机构应及时完成整改，拒不整改或逾期未完成整改的机构将被列入黑名单并依法处理。

值得注意的是，在《实施意见》出台前，由于现行规定的不明确，各界对校外线上培训机构是否需要取得县级教育行政部门颁发的办学许可证存在不同的理解。如在2018年8月发布的《关于规范校外培训机构发展的意见》中规定，校外培训机构（未明确区分线上线下）都需取得办学许可证；同月，司法部发布的《中华人民共和国民办教育促进法实施条例（修订草案）（送审稿）》中提到“利用互联网技术在线实施

On July 12, 2019, the Ministry of Education (the “MOE”), together with five other central departments, issued the *Implementing Opinions on the Regulation of Online After-School Training* (the “Opinions”). The Opinions mainly regulate subject-oriented, online after-school training activities for primary and secondary school students (the “Online After-school Training”). According to the Opinions, institutions providing the above-mentioned training programs (the “Online After-school Training Institutions”) will be subject to record-filing administration. After obtaining necessary operating licenses such as the internet content provider (ICP) filing receipt and telecommunication business operation license (if involved in telecommunication business) as well as preparing sufficient supporting documents for data processing and cyber security, the Online After-School Training Institutions shall go through the filing procedures with the competent local provincial education authorities. In addition, the Opinions also required that (i) the provincial education authorities, jointly with other departments, shall carry out a comprehensive inspection on all Online After-school Training Institutions by the end of this year; and (ii) non-compliant institutions should complete rectifications in time, and those who refuse or fail to rectify within the time limit will be blacklisted and undertake corresponding legal liabilities.

It is noteworthy that, before the issuance of the Options, with respect to whether Online After-school Training Institutions should obtain school operating permits from county-level education authorities, there are different understandings in practice largely resulted from the ambiguity of current laws and

培训教育活动应当取得相应的互联网经营许可，并向机构住所地的省级人民政府教育行政部门、人力资源社会保障部门备案，并不得实施需要取得办学许可的教育教学活动；同年11月，在教育部办公厅等三部门联合发布的《关于健全校外培训机构专项治理整改若干工作机制的通知》中提到“省级教育行政部门要做好面向中小学生的利用互联网技术在线实施培训教育活动的备案工作，切实把好入口关，按照线下培训机构管理政策，同步规范线上教育培训机构。尽管《实施意见》未明确规定开办校外线上培训机构毋需取得办学许可证，但是根据教育部相关负责人就《实施意见》答记者问，我们理解，基于线上线下培训的不同特点，校外线上培训机构与线下培训机构将适用不同的管理制度——校外线上培训需经过所在地的县级教育行政部门审批，取得办学许可证；而校外线上培训机构应向其住所地的省级教育行政部门申请备案即可。当然，未来主管机关在监管实践中是否也做如此理解和适用，仍有待进一步观察。后续是否会出台具体的实施细则或对上述问题作出更明确的阐释，我们将保持持续关注。

regulations as follows: (i) In August, 2018, the General Office of the State Council issued the *Opinions on Regulating the Development of After-School Training Institutions*, according to which school operating permits are required for after-school training institutions (online or offline institutions are not specified therein); (ii) In the same month, the Ministry of Justice released for public comments the *Implementing Rules of the Law on the Promotion of Private Education (Revised Draft) (Draft for Review)* (please refer to our September 2018 issue of *China Regulatory Updates* for details), which clearly stipulated that institutions providing online training programs using Internet technology shall obtain Internet operation licenses and go through the filing procedures with the provincial education authorities or human resources and social security authorities (as the case may be), and shall not run any educational training activity requiring a school operating permit; and (iii) In November, 2018, the general office of MOE, together with two other governmental departments, issued the *Notice on Improving Several Working Mechanisms for Special Rectifications of After-School Training Institutions*, which stipulated that provincial education authorities should be responsible for record-filing administration of institutions using Internet technology to provide online training and education activities for primary and secondary school students, and such online after-school training institutions shall be regulated by reference to the administration policies applied to the offline training institutions. Although it is still not clear from the Opinions whether the Online After-school Training Institutions shall obtain school operating permits, according to a spokesman for the MOE, we understand that, online and offline after-school training institutions may apply different administration systems based upon the different characteristics of online and offline trainings, i.e., the offline after-school training institutions are subject to pre-approval of the county-level education authorities to obtain school operating permits, while the Online After-school Training Institutions are only required to go through the filing procedures with the provincial education authorities. It remains to be seen, however, whether the implementation of the Opinions and other relevant regulations by competent authorities in future are consistent with the above-mentioned understandings. We will continue to monitor and timely update detailed guidance for the Opinions, as well as further explanation or clarifications from competent authorities in this connection.

ANTITRUST / 反垄断

Three Supporting Regulations for Anti-Monopoly Law Issued 三部反垄断法配套规章出台

2019年7月1日，国家市场监督管理总局发布了《禁止垄断协议暂行规定》、《禁止滥用市场支配地位行为暂行规定》及《制止滥用行政权力排除、限制竞争行为暂行规定》三部《反垄断法》配套规章（合称“反垄断规章”），对国家发改委和原工商总局发布的相关《反垄断法》配套规章进行整合。反垄断规章将于2019年9月1日起正式施行，原相关规章同时废止。

反垄断规章的集中出台，解决了市场监管总局组建之前反垄断立法分散带来的规则差异、执法标准不统一等问题，并结合实践经验提高了执法的可操作性与透明度（例如增加了认定和互联网、知识产权有关的市场支配地位时需要考虑的因素），为经营者合法合规经营提供了更为明确的依据。根据相关新闻报道，《反垄断法》的修订目前正在积极推进中，我们对此也会进一步关注。

On July 1, 2019, the State Administration for Market Regulation (the “SAMR”) issued three supporting regulations for the Anti-Monopoly Law, namely the *Interim Provisions on Prohibition of Monopoly Agreements*, the *Interim Provisions on Prohibition of Abuse of Dominant Market Position* and the *Interim Provisions on Curbs on Abuse of Administrative Power to Exclude or Restrict Competitive Activities* (collectively, the “Anti-Monopoly Regulations”), aiming to coordinate, unify and replace the existing supporting rules for the Anti-Monopoly Law previously issued by the National Development and Reform Commission and the former State Administration for Industry and Commerce. The Anti-Monopoly Regulations will come into force on September 1, 2019.

The Anti-Monopoly Regulations will help to eliminate discrepancies and inconsistencies in the application and enforcement of the existing anti-monopoly regulations by different anti-monopoly enforcement agencies before the establishment of the SAMR. Moreover, after comprehensively summarizing historical experience and combining it with the new situation, the Anti-Monopoly Regulations will enhance the operability and transparency in the enforcement of the law and provide market operators with more clear guidance on antitrust

compliance at the same time. It is reported that the revision of the Anti-Monopoly Law is being actively promoted, and we will continue to monitor and timely update major developments in this connection.

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