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TABLE OF CONTENTS / 本期内容

COMPANY LAW / 公司法

SAMR Seeks Public Comments on Draft Registered Capital
Registration and Management System / 市场监管总局就注册资本登
记管理制度征求意见 2

ANTI-MONOPOLY / 反垄断

The Provisions on the Filing Thresholds for Concentrations of
Undertakings Officially Promulgated / 修订后的经营者集中申报标
准正式发布 3

DATA SECURITY / 数据安全

CAC Released Provisions to Relax Supervision of Cross-Border Data
Transfers / 网信办公布新规，放松数据跨境流动监管 4

CROSS-BORDER FINANCING / 跨境融资

Shenzhen Newly Revised Pilot Measures for QFLPs / 深圳发布新修
订的《深圳市合格境外有限合伙人试点办法》 6



COMPANY LAW / 公司法

SAMR Seeks Public Comments on Draft Registered Capital Registration and Management System
市场监管总局就注册资本登记管理制度征求意见

2023年12月29日，全国人大常委会通过新修订的《中华人民共和国公司法》（“新《公司法》”），自2024年7月1日起施行。其中，注册资本登记管理制度作为重要的修订内容之一，规定有限责任公司自公司成立之日起5年内缴足注册资本，新《公司法》实施前已经设立的公司（“存量公司”）应当逐步调整出资期限至规定期限以内，并且对于出资期限、出资额明显异常的，公司登记机关可要求公司进行及时调整（详情参见本所2023年第4季度《中国立法动态》）。

为落实新《公司法》的上述规定、有序实现新旧注册资本登记管理制度转换，市场监管总局于2024年2月6日发布了《国务院关于实施〈中华人民共和国公司法〉注册资本登记管理制度的规定（征求意见稿）》（“《登记管理制度》”），拟对新设公司和存量公司的注册资本出资期限、过渡期安排、异常情况、减资程序、例外情形、信息公示等事项进行明确和规范，其中尤其值得关注的是：

1. **设置存量公司调整出资期限的过渡期：**就新《公司法》“逐步调整”的要求，《登记管理制度》明确了对存量公司设置3年过渡期（自2024年7月1日起至2027年6月30日止），以调整其出资期限。对于有限责任公司，若自2027年7月1日起剩余出资期限不足5年，则无需调整出资期限；若超过5年，则应在过渡期内将剩余出资期限调至5年内。对于股份有限公司，应当在过渡期内缴足认购的股款。换言之，存量的有限责任公司和股份有限公司最晚应分别在2032年6月30日及2027年6月30日前完成实缴。
2. **明确公司增资时的实缴出资期限：**《登记管理制度》明确了公司增资时同样适用新《公司法》有关新设公司的实缴出资期限要求，即有限责任公司新增认缴注册资本应当五年内缴足；股份有限公司增加注册资本的，应当在公司股东全额缴足股款后，办理注册资本变更登记。
3. **明确出资期限、出资额明显异常的判定处置方式：**就新《公司法》及时调整“出资期限、出资额明显异常”的要求，《登记管理制度》对异常情况的判定处置方式进行了明确。对于“出资期限超过三十年或者出资额超过十亿元”的存量公司，公司登记机关可结合股东出资能力、主营项目、资产规模等情况对注册资本的真实性进行研判。对于被认定为出资期限、出资额明显异常的公司，经省级市场监管部门同意后，可依法要求其在6个月内进行调整，调整后的出资期限自2027年7月1日起不得超过5年。鉴于上述对股份有限公司过渡期内缴足认购股款的规定，本条规定是否仅针对存量的有限责任公司，有待进一步观察。

On December 29, 2023, the Standing Committee of the PRC National People's Congress adopted the revised and restated version of the *PRC Company Law* (the "New Company Law"), which will take effect as of July 1, 2024. The registered capital registration and management system, as one of the important amendments of the New Company Law, provides that the registered capital of a limited liability company (LLC) should be fully paid within five years from the date of its establishment. For companies which are established prior to the effective date of the New Company Law (the "Existing Companies"), they shall gradually adjust their current capital contribution period to fit into the stipulated period. For companies whose contribution periods or contribution amounts are obviously abnormal, the company registration authority may require them to make relevant adjustments in a timely manner (please refer to our 2023 Quarter 4 issue of *China Regulatory Updates* for details).

In order to implement the above provisions of the New Company Law and to orderly transition from the old to the new registered capital registration and management systems, the PRC State Administration for Market Regulation (SAMR) issued the *Draft Provisions of the State Council on Implementing the Registered Capital Registration and Management System under the Company Law of the People's Republic of China* (the "Draft Registration and Management System") on February 6, 2024, which proposes to clarify and regulate the registered capital contribution periods, transitional arrangements, abnormal situations, capital reduction procedures, exemptions, information disclosure and other matters in relation to newly established companies and the Existing Companies. Highlights of the Draft Registration and Management System includes, among others:

1. **Setting a transition period for Existing Companies:** In response to the "gradual adjustment" requirement in the New Company Law, the Draft Registration and Management System sets a three-year transition period for the Existing Companies (from July 1, 2024 to June 30, 2027) to adjust their capital contribution periods. For a LLC, if the remaining capital contribution period is less than 5 years from July 1, 2027, there is no need to make adjustment; if exceeding 5 years, the remaining capital contribution period should be adjusted to within 5 years during the transition period. For a company limited by shares (CLS), the subscribed capital shall be paid in full within the transition period. In other words, the registered capital of the existing LLCs and CLSs shall be paid in full by June 30, 2032 and June 30, 2027, respectively.
2. **Clarifying the capital contribution period in case of capital increase:** The Draft Registration and Management System clarifies that the capital contribution period requirement for newly established companies will also apply in cases of capital increase. If an LLC increases the subscribed registered capital, the increased subscribed capital shall be fully paid by the shareholders within five years; if a CLS increases the registered capital, the capital registration change shall only be made after its shareholders have made full payment.
3. **Clarifying the identification and dealing with companies with obvious abnormal contribution periods and amounts:** In response to the New Company Law's requirements for "companies whose contribution periods or contribution amounts are obviously abnormal" to make timely adjustments, the Draft Registration and Management System clarifies the identification and dealing with such exceptional situation. For the Existing Companies with a "contribution period exceeding thirty years or contribution amount exceeding RMB1 billion", the authenticity of registered capital will be accessed by the company

4. **新增简易减资程序：**针对于上述过渡期内减少注册资本的存量公司，在新《公司法》相关规定的基础上，《登记管理制度》新增了简易减资程序。若符合以下条件，公司可通过国家企业信用信息公示系统向社会公示20日，公示期内债权人没有提出异议的，公司凭申请书、承诺书办理注册资本变更登记：**(i)**该公司为新公司法施行前设立的公司；**(ii)**该公司在过渡期内申请减少注册资本但不减少实缴出资；**(iii)**该公司不存在未结清债务或者债务明显低于公司已实缴注册资本等情形；**(iv)**全体股东承诺对减资前的公司债务在原有认缴出资范围内承担连带责任；及**(v)**全体董事承诺不损害公司的债务履行能力和持续经营能力。相较于一般减资程序中编制资产负债表及财产清单等要求，简易减资程序有助于存量公司高效、便捷地调整出资额，以便满足新《公司法》注册资本的实缴要求。

此外值得注意的是，《登记管理制度》规定了对于新设有限责任公司，若有注册资本“明显过高，有悖客观常识和所在行业特点，明显不具备实缴资本等违背真实性原则”，公司登记机关可以依法不予登记。以上规定看似赋予公司登记机关对于注册资本登记的实质审查权，但目前尚未规定“违背真实性原则”等条件的具体判断标准。我们将持续关注正式通过的规定是否会对此进行细化。

registration authorities by evaluating the shareholders' capital contribution capacity, main business, asset scale, etc. If a company is identified as having an obvious abnormal capital contribution period or contribution amount, it may be required to make adjustments within 6 months with the approval of the provincial market regulatory departments and the adjusted contribution period shall not exceed 5 years from July 1, 2027. In view of the above-mentioned provisions on shareholders of CLSs making full payment of registered capital during the transition period, it remains to be seen whether this provision is only applicable to the existing LLCs.

4. **Adding a simplified capital reduction procedure:** with respect to the Existing Companies that reduce registered capital during the above-mentioned transition period, on the basis of the relevant provisions in the New Company Law, a new simplified procedure for capital reduction has been added to the Draft Registration and Management System. If the following conditions are satisfied, a company may complete the capital change registration with the application letter and commitment letter after announcing the proposed capital changes to the public through the National Enterprise Credit Information Publicity System for 20 days and no objection being raised by any creditors during the publicity period: **(i)** the company was established before the implementation of the New Company Law; **(ii)** the company applies to reduce the registered capital during the transition period without reduce the actual contributed capital; **(iii)** the company has no outstanding debts, or debts are significantly lower than the company's paid-in registered capital; **(iv)** all shareholders promise to bear joint and several liability for the company's debts incurred before the capital reduction within the original subscribed capital contribution; and **(v)** all directors promise not to impair the company's debt performance ability and continuous operation capability. Compared with the requirements of preparing balance sheets and assets lists in the general capital reduction procedure, the simplified capital reduction procedures will help the Existing Companies adjust capital contributions efficiently and conveniently, so as to meet the paid-in requirements of the registered capital under the New Company Law.

Notably, the Draft Registration and Management System stipulates that for a newly established LLC, if the registered capital "is obviously overly high, or is contrary to common sense and industry characteristics, obviously lacks the ability to make actual payments or has other circumstances that violate the principle of authenticity", the company registration authority may refuse to register it in accordance with applicable law. Although such provisions seem to grant the company registration authority the substantive power to review the registration of registered capital, there are currently no specific criteria for determining conditions such as "violate the principle of authenticity". We will continue to monitor and update on whether the officially adopted version will make further refinement in this regard.

ANTI-MONOPOLY / 反垄断

The Provisions on the Filing Thresholds for Concentrations of Undertakings Officially Promulgated 修订后的经营者集中申报标准正式发布

为配合2022年新修订的《反垄断法》的实施，国家市场监督管理总局曾于2022年6月就《国务院关于经营者集中申报标准的规定（修订草案征求意见稿）》（“申报标准征求意见稿”）公开征求意见。2024年1月26日，国务院正式发布了修订后的《国务院关于经营者集中申报标准的规定》（“新《申报标准》”），该规定自公布之日起实施。新《申报标准》的主要修订内容包括以下几个方面：

To implement the Anti-Monopoly Law amended in 2022, SAMR released *the Provisions of the State Council on the Filing Thresholds for Concentrations of Undertakings (Draft for Comments)* (the "Draft Thresholds") for public comments in June 2022. On January 26, 2024, the State Council officially promulgated the revised *the Provisions of the State Council on the Filing Thresholds for Concentrations of Undertakings* (the "New Thresholds"), which took effect from the date of promulgation. Highlights of the New Thresholds include:

1. **Raising the turnover thresholds for filing:** The New

1. **提高经营者集中的营业额申报标准：**新《申报标准》大幅提高了经营者集中申报的营业额标准：参与集中的至少两个单个经营者的中国境内营业额、所有经营者的中国境内合计营业额及所有经营者的全球范围合计营业额由4亿元、20亿元和100亿元人民币，分别提高到8亿元、40亿元和120亿元人民币。这是自2008年8月1日《反垄断法》施行以来，首次正式针对经营者集中申报的营业额标准进行调整。调整后的营业额申报标准更加适应现阶段中国经济的发展情况。可以预见的是，调整后需要申报的案件数量将有所下降，有助于减轻企业的并购交易成本、加快交易节奏。
 2. **新增申报标准实施状况评估：**新《申报标准》增加一条全新的条款，规定国务院反垄断执法机构应当根据经济发展情况，对申报标准的实施情况进行评估。这意味着国务院可能会根据反垄断执法机构的评估结果，对申报标准进行动态调整。
 3. **未引入关于“掐尖式并购”的申报标准：**值得说明的是，虽然与申报标准征求意见稿相比，新《申报标准》删除了对于“掐尖式并购”（即一家大型企业收购规模较小但潜力较大的初创型企业）提出的“营业额+市值（或估值）”这一标准，但鉴于新《申报标准》中保留了执法机构主动调查的规定，延续了《反垄断法》及《经营者集中审查规定》中对未达申报标准，但具有或者可能具有排除、限制竞争效果的交易的关注，以及国家市场监督管理总局正在研究制定相关工作规则，市场普遍认为“掐尖收购”在反垄断执法实践中仍会是关注重点，经营者应注意防范相关风险。
- Thresholds significantly increased the turnover thresholds for filing of concentration of undertakings: the turnover in China of at least two single undertakings involved, the aggregated turnover in China of all undertakings involved and the aggregated global turnover of all undertakings involved increased from RMB400 million, 2 billion and 10 billion to RMB800 million, 4 billion and 12 billion, respectively. This marks as the first official revision of the turnover thresholds of merger control filing since the Anti-Monopoly Law's coming into force on August 1, 2008. The New Thresholds is more in line with the current stage of China's economic development. It is foreseeable that with the revised thresholds, the number of filings will decrease, which will help reduce the transaction costs of the undertakings and speed up the pace of transactions.
2. **Adding an assessment of the implementation status of the filing thresholds:** the New Thresholds added a new provision stipulating that SAMR should assess the implementation of the filing thresholds based on the economic development situation. This implies that the State Council may make dynamic adjustment to the filing thresholds by reference to SAMR's assessment results.
 3. **Non-adoption of proposed “killer acquisitions” thresholds:** notably, although the New Thresholds have removed the “turnover + market value (or valuation)” thresholds proposed for the corporate giants' acquisitions of small-scale but promising start-up enterprise or “killer acquisitions” compared to the Draft Thresholds, the New Thresholds retain the provision for proactive investigation by the enforcement agency to “call-in” and review transactions that fall below the thresholds but have or may have the effect of eliminating or restricting competition, as stipulated in the Anti-Monopoly Law and the *Provisions on the Review of Concentrations of Undertakings*. In addition, as SAMR is currently studying and formulating relevant implementing rules and detailed guides, it is commonly believed that the “killer acquisitions” might still be a focus in future anti-monopoly enforcement practice and operators are advised to pay attention to related potential risks.

DATA SECURITY / 数据安全

CAC Released Provisions to Relax Supervision of Cross-Border Data Transfers 网信办公布新规，放松数据跨境流动监管

2024年3月22日，国家互联网信息办公室（“网信办”）公布了《促进和规范数据跨境流动规定》（“《数据跨境规定》”），自公布之日起施行。正式出台的《数据跨境规定》对数据出境安全评估、个人信息出境标准合同、个人信息保护认证等数据出境监管制度作出调整，适当地放宽数据跨境流动条件，提高跨境数据流动的便利性。该规定将会对数据出境产生以下重要影响：

1. **引入数据出境手续的豁免情形：**《数据跨境规定》明确了六类免于申报数据出境安全评估、订立个人信息出境标准合同或通过个人信息保护认证的数据出境情形，具体包括：(i)国际贸易、跨境运输、学术合作、跨国生产制造和市场营销等活动中收集和产生的数据向境外提供，不包含个人信息或者重要数据的；(ii)在境外收集和产生

On March 22, 2024, the Cyberspace Administration of China (CAC) released *the Provisions on Facilitation and Regulation of Cross-Border Data Flows* (the “Data Provisions”), with immediate effect on the date of promulgation. The Data Provisions adjust the regulatory system for cross-border data transfers, including security assessment (the “Security Assessment”), entering into standard contract (the “SCC”), obtaining a personal information protection certification (the “PI Protection Certification”), etc. By relaxing the requirements for cross-border data transfers, the Data Provisions may enhance the convenience of cross-border data flows. Highlights of the Data Provisions are as follows:

1. **Introducing new exemptions for data transfer scenarios:** the Data Provisions specified 6 cross-border data transfer scenarios that are exempted from the requirements of going through the Security Assessment, entering into a SCC or obtaining PI Protection Certification: (i) the cross-border data transfer of data arising from international trade, cross-border transportation, academic cooperation, cross-border manufacturing, marketing and other activities that do not involve personal information (the “PI”) or important data; (ii) the cross-border transfer of PI originally collected

的个人信息传输至境内处理后向境外提供，处理过程中没有引入境内个人信息或者重要数据的；(iii)为订立、履行个人作为一方当事人的合同（如跨境购物、跨境寄递、跨境汇款等），确需向境外提供个人信息的；(iv)按照依法制定的劳动规章制度和依法签订的集体合同实施跨境人力资源管理，确需向境外提供员工个人信息的；(v)紧急情况下为保护自然人的生命健康和财产安全，确需向境外提供个人信息的；以及(vi)关键信息基础设施运营者以外的数据处理器自当年1月1日起累计向境外提供不满10万人个人信息（不含敏感个人信息）的。此外，自由贸易试验区制定的负面清单外的数据出境活动，可以免于履行数据出境手续。对于以上不涉及境内个人信息及重要数据、或者低风险的数据出境活动，免于履行数据出境手续将大为降低相关主体的合规成本、提高数据跨境流动的灵活性。

2. **明确“重要数据”出境安全评估申报标准：**根据《数据跨境规定》，未被相关部门、地区告知或者公开发布为重要数据的，数据处理器不需要为重要数据申报数据出境安全评估。此前《数据出境安全评估办法》等法规中虽涉及重要数据的合规要求，但对于何为重要数据缺乏清晰、明确的界定标准。以上新规有助于降低数据处理器对于判断是否涉及处理重要数据的不确定性和合规风险，但数据处理器仍需及时关注所属行业和地区的主管部门是否发布了重要数据目录。
3. **提高数据出境安全评估的触发门槛：**《数据跨境规定》进一步明确了应当申报数据出境安全评估的两类数据出境活动：(i)关键信息基础设施运营者向境外提供个人信息或者重要数据；或(ii)关键信息基础设施运营者以外的数据处理器向境外提供重要数据，或者自当年1月1日起累计向境外提供100万人以上个人信息（不含敏感个人信息）或者1万人以上敏感个人信息。同时，对于未达到上述数据出境安全评估的触发门槛、又不符合数据出境手续豁免情形的数据出境活动，则应当订立个人信息出境标准合同或者通过个人信息保护认证。相较于此前《数据出境安全评估办法》中规定的关键信息基础设施运营者以外的数据处理器向境外提供个人信息应进行安全评估的申报标准（即历史累计处理100万人以上个人信息、或者自上年1月1日起累计向境外提供10万人个人信息或1万人敏感个人信息），《数据跨境规定》大幅提高了数据出境安全评估的触发门槛。

此外，为配合落实《数据跨境规定》，网信办于同日发布《数据出境安全评估申报指南（第二版）》和《个人信息出境标准合同备案指南（第二版）》，对数据出境安全评估申报及个人信息出境标准合同备案的要求作出了具体说明，优化简化相关材料要求，降低了数据出境企业准备申报材料的难度。

and generated outside of China and then transferred into China for processing, and subsequently transferred abroad, provided no PI or important data collected and generated within China is incorporated during processing; (iii) the cross-border transfer of PI for purposes of entering into or performing a contract to which the individual concerned is a party, such as one concerning cross-border shopping, cross-border delivery, cross-border wirings, etc.; (iv) the provision of employees' PI overseas for the implementation of cross-border human resources management in accordance with the legally established employment policies and lawfully signed collective labor contracts; (v) the provision of PI overseas in emergency situations to protect an individual's life, health and property; and (vi) the provision of PI (excluding sensitive PI) of no more than 10,000 individuals since January 1 of that year by the data processors other than critical information infrastructure operators (the "CIIOs"). In addition, it is also exempted from performing data transfer procedure if such data is not included in the negative lists formulated by the free trade zones (FTZs). For the above data transfer activities that do not involve domestic PI and important data, or are of low-risk, being exempted from cross-border data transfers procedure will significantly reduce the compliance costs of relevant entities and improve the flexibility of cross-border data flows.

2. **Clarifying standards for the Security Assessment of the transfer of "important data":** According to the Data Provisions, data processors are not required to apply for the Security Assessment for cross-border transfer of "important data" if the data has not been notified or publicly classified as "important data" by relevant departments or regions. Although previous regulations such as the *Measures on Security Assessment of Data Cross-border Transmission* (the "Data Measures") have involved compliance requirements regarding important data, there was a lack of clear and precise definition and standards for what constitutes important data. The Data Provisions will help reduce the uncertainty and data processors' compliance risks in determining whether important data is involved. However, data processors still need to check from time to time whether the competent authorities in certain industries and regions have released important data catalogs.
3. **Raising the trigger threshold for the Security Assessment for the cross-border data transfers:** The Data Provisions further clarifies two types of cross-border data transfer activities that should be subject to the Security Assessment: (i) CIIOs provide PI or important data overseas; or (ii) data processors other than CIIOs provide important data overseas, or provide PI (excluding sensitive PI) of more than 1 million individuals or sensitive PI of more than 10,000 individuals overseas since January 1 of that year. At the other hands, for cross-border data transfer activities that do not meet the trigger thresholds of the above-mentioned Security Assessment and do not fall in the exemption scenarios, the SCC shall be entered into or PI Protection Certification shall be obtained. Compared with the Security Assessment thresholds provided in the Data Measures for data processors other than CIIOs who provide PI overseas (i.e., PI of more than 1 million individuals being processed in history, or PI of 100,000 individuals or sensitive PI of more than 10,000 individuals being provided overseas since January 1 last year), the Data Provisions have significantly increased the triggering thresholds for the Security Assessment for the cross-border data transfers.

To implement the Data Provisions, CAC issued the *Guidelines for Application for Security Assessment for Cross-Border Data Transfers (Second Edition)* and the *Guidelines for Filing of the Standard Contracts for Cross-border Transfers of Personal Information (Second Edition)* on the same day, which specify the requirements for application of the Security Assessment for the cross-border data transfers and the filing of SCC for the cross-border transfer of PI, optimize and simplify the requirements for

relevant materials and reduce the difficulty for companies to prepare relevant application materials.

CROSS-BORDER FINANCING / 跨境融资

Shenzhen Newly Revised Pilot Measures for QFLPs 深圳发布新修订的《深圳市合格境外有限合伙人试点办法》

2024年1月5日，深圳市地方金融监督管理局发布了《深圳市合格境外有限合伙人试点办法》（“新《深圳QFLP办法》”），于同日起施行。作为深圳市2012年首次发布QFLP试点政策后的第三次修订，新《深圳QFLP办法》取代了2021年发布的《深圳市外商投资股权投资企业试点办法》（“原《深圳QFLP办法》”），有利于进一步优化深圳市外商投资环境、吸引合格境外有限合伙人（“QFLP”）的聚集投资。

具体而言，新《深圳QFLP办法》主要有以下几点值得关注：**(i)**开展试点基金总量管理。新《深圳QFLP办法》规定，符合条件的试点基金管理企业可在总量内发起设立一支或多支试点基金、灵活调剂单支试点基金规模。以上规定将深圳前海合作区已率先试行的总量管理模式推广至深圳全市，有利于提高投资项目审批效率；**(ii)**扩大试点基金投资范围。相较于原《深圳QFLP办法》，新《深圳QFLP办法》进一步扩大了试点基金的投资范围，在非上市公司股权、上市公司非公开发行普通股等原投资范围基础上新增“可转换为普通股的优先股和可转债”“不良资产投资”，并允许试点基金采用基金中基金（FOF）形式运作，进而可以投资“在中国证券投资基金业协会备案的不动产私募投资基金”；**(iii)**明确联合会商办理时限。新《深圳QFLP办法》明确市地方金融监督管理局与市发展改革委、市商务局、市市场监管局等单位联合会商的办理时限为自企业线上提交材料齐备起10个工作日，提高了境外投资人申请QFLP资质所需时间的可预期性。

On January 5, 2024, the Local Financial Regulatory Authority of Shenzhen Municipality released the *Shenzhen Pilot Measures for Qualified Foreign Limited Partners (QFLPs)* (the “New Measures”), effective from the date of release. As the third revision since Shenzhen first introduced the QFLP pilot policy in 2012, the New Measures have replaced the *Shenzhen Pilot Measures for Foreign-invested Equity Investment Enterprises* (the “Original Measures”) issued in 2021, aiming to further optimize Shenzhen’s foreign investment environment and attract QFLPs to gather and invest in Shenzhen.

Specifically, highlights of the New Measures mainly include: **(i)** adopting total scale management model. The New Measures stipulate that qualified pilot fund managers may establish one or more pilot funds within the total approved amount and adjust the scale of individual pilot fund flexibly. Such total scale management model was first tried in the Shenzhen Qianhai Cooperation Zone, and is now applied to the entire Shenzhen Municipality to improve the efficiency of investment project approvals; **(ii)** expanding the investment scope of pilot funds. Compared with the Original Measures, the New Measures allow pilot funds to further expand the investment scope of pilot funds. In addition to the original investment scope, which included equity investment in private companies and non-public issued ordinary shares by listed companies, the New Measures also add “convertible preferred shares and convertible bonds” and “distressed asset investments”. Furthermore, pilot funds are allowed to operate in the form of a Fund of Funds (FOF), thereby enabling them to invest in “real estate private equity funds filed with the Asset Management Association of China”; and **(iii)** clarifying the time limit for joint consultation process. The New Measures clarify that the processing time limit for joint consultation by the Local Financial Regulatory Authority with the Development and Reform Commission, Commerce Bureau, Administration for Market Regulation, and other relevant authorities is 10 working days from the date an enterprise submitting all required materials online, enhancing the predictability of the time required for foreign investors to apply for QFLP qualifications.

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