



China Regulatory Updates

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Connotation of "Han Yi"

- ▶ *Standardization*
- ▶ *Unique player in the PRC legal service market*
- ▶ *Simplicity, but always with a focus on key points and attention to details*

Our Values

- ▶ *Professionalism*
- ▶ *Cost Efficiency and Effectiveness*
- ▶ *Constant Self-Improvement Towards Perfection*



■ SECURITIES/INVESTMENT / 证券/投资

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CIRC Strengthens Administration of Insurance Companies' Capital Reserve

保监会强化保险公司资本保证金管理

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SECURITIES/INVESTMENT / 证券/投资

Direct Equity Investment by Securities Companies Subject to Routine Regulation; Establishment of PE Funds Permitted

证券公司直投业务纳入常规监管，允许设立直投基金

After five years' pilot practice, on July 8, 2011, CSRC promulgated the *Guidelines for the Regulation of Direct Investment of Securities Companies* (the "Guidelines"), pursuant to which direct investment of securities companies will be subject to routine regulation. According to the Guidelines, CSRC will no longer examine the qualification of each direct investment subsidiary on an individual basis, and securities companies now only need to file with local CSRC offices upon establishment or change registration of a direct investment subsidiary or direct PE investment fund.

Compared with the previous pilot policies, the Guidelines have made the following changes that we feel are worth highlighting:

1. Direct PE Investment Funds Permitted to Be Established Through Private Placement. During the previous pilot period, direct investment subsidiaries of securities companies were only permitted to make equity investments with self-owned funds. The Guidelines lift this restriction and permit direct investment subsidiaries to establish direct investment funds, through which they could conduct fundraising (only limited to private placement) and make relevant equity investments, provided that: (i) the investors are limited to institutional investors with a strong ability to identify and withstand potential risks; and (ii) the number of investors for each direct investment fund may not exceed 50.
2. Control Direct Investment Risks. The Guidelines stipulate that a securities company may not invest over 15% of its net capital in direct investment subsidiaries, direct investment funds, industrial funds or fund management companies. In addition, a direct investment subsidiary or direct investment fund may not become an investor that will assume joint and several liabilities for the debts of an investee enterprise.
3. Prevent Conflicts of Interest. In order to prevent a potential conflict of interest stemming from a situation where a securities company is both the IPO sponsor and investor of an enterprise (i.e., "direct investment + sponsor" model), the Guidelines provide that senior managers and practitioners of a direct investment subsidiary (excluding directors, supervisors or members of the investment committee) may not concurrently work at a securities company. If a securities company serves as the tutor, financial advisor, sponsor or lead underwriter of a pro-listed company, its direct investment subsidiary or direct investment fund may not, from the conclusion of relevant service agreement or substantive involvement in relevant service onward, make any investment in the pro-listed company.

The promulgation and implementation of the Guidelines is

经过 5 年的试点，2011 年 7 月 8 日，证监会发布了《证券公司直接投资业务监管指引》（“《指引》”），正式将证券公司开展直投业务纳入常规监管。纳入常规监管后，证监会将不再对直投子公司的资格进行逐一审批，证券公司只需在直投子公司或直投基金设立或变更完成登记后向住所地证监局报备。

与此前的试点政策相比，《指引》中以下内容值得关注：

1. 允许设立直投基金进行私募：在此前的试点阶段，证券公司的直投子公司只能以自有资金进行投资。《指引》放宽了这项要求，允许直投子公司设立直投基金，向社会募集资金（仅限于私募）并进行股权投资，但同时规定：(i) 投资者限于具有较强的风险识别能力和承受能力的机构投资者；以及(ii) 单只直投基金的投资者数量不得超过五十个。
2. 控制直投资风险：《指引》要求证券公司直投子公司、直投基金、产业基金及基金管理机构的投资金额合计不得超过公司净资产的 15%。另外，直投子公司及直投基金不得成为对所投资企业的债务承担连带责任的出资人。
3. 防范利益冲突：为防止证券公司既为企业上市做保荐又对该企业进行投资的行为（即“直投+保荐”模式）涉及到利益输送等问题，《指引》规定了直投子公司高管人员和从业人员（不包括董事、监事、投资决策委员会成员）不得在证券公司兼职；如果证券公司担任拟上市企业的辅导机构、财务顾问、保荐机构或者主承销商的，自签订有关协议或者实质开展相关业务之日起，该证券公司的直投子公司及直投基金等不得再对该拟上市企业进行投资。

《指引》的颁布和实施对拟涉足直投业

undoubtedly good news for securities companies intending to engage in direct equity investments. However, the Guidelines also have some ambiguous and even conflicting provisions, e.g., the provision that “a direct investment subsidiary may not become an investor that will assume joint and several liabilities for the debts of an investee enterprise” is generally in conflict with the direct investment company’s capacity normally as the GP for its direct investment fund. In order to address this problem, securities companies may need to design a special legal structure for establishing direct investment funds. In addition, it still remains to be seen whether and to what extent the Guidelines will prevent conflicts of interest between a securities company’s direct investment and sponsor business.

According to reports, there are currently over 30 securities companies that have established direct investment subsidiaries, with registered capital of over RMB20 billion, of which RMB10 billion has already been invested. It is also reported that, before promulgation of the Guidelines, CICC Jia Cheng Investment Co., Ltd., the direct investment vehicle of CICC, had already obtained the approval of CSRC and established the first direct investment fund, with a targeted size of RMB5 billion.

务的证券公司而言无疑是个好消息。但《指引》也存在一些模糊甚至冲突的规定，比如在上面提及的“直投子公司不得成为对所投资企业的债务承担连带责任的出资人”的规定，与直投子公司作为直投基金发起人的身份（即一般情况下的 GP）存在一定冲突，证券公司可能需要为此为设立直投基金设计特殊的法律结构。另外，《指引》在防范证券公司直投和保荐业务利益冲突方面的努力能多大程度上发挥作用，也值得进一步观察。

据悉，目前已有超过 30 家证券公司设立直投子公司，注册资金超过人民币 200 亿元，并已完成超过人民币 100 亿元的投资。另据报道，在《指引》颁布之前，中金公司的直投子公司（中金佳成投资有限公司）已经率先取得了证券会的批准设立首个直投基金，计划对外募集资金人民币 50 亿元。

FOREIGN EXCHANGE / 外汇

SAFE Tightened Control on Settlement of FIEs' Equity Capital

外管局严控外商投资企业资本金结汇

SAFE recently issued the *Supplementary Circular on Relevant Business Operation Issues Concerning Improving the Administration of Payment and Settlement of Equity Capital of Foreign Invested Enterprises* (the “Circular”), aiming to further strengthen regulation of the authenticity and compliance issues related to the settlement of foreign exchange equity capital of foreign invested enterprises (“FIE”). The Circular came into force as of August 1, 2011.

The Circular sets forth more requirements on the materials that must be submitted for FIE foreign exchange capital settlement, strengthens the authenticity examination of application materials and post-settlement regulation with respect to foreign exchange capital settlement exceeding a certain threshold, restricts foreign exchange capital settlement for petty cash, and requires regulatory authorities to adopt a black list policy for FIEs settling foreign exchange capital in violation of relevant regulations (foreign exchange capital settlement of FIEs listed on the black list will be subject to heavier examination).

Currently, foreign exchange capital may be settled through various disguised ways, e.g., by cheating through false VAT invoices or false contracts, in the name of petty cash in several installments, or in the name of repayment of bank loans, all of which make it difficult for SAIC authorities to regulate direct investment. The Circular has explicitly prohibited or restricted these tactics commonly used to circumvent regulation on foreign exchange

外管局近日下发了《关于完善外商投资企业外汇资本金支付结汇管理有关业务操作问题的补充通知》（“《通知》”），进一步加强对外商投资企业资本金结汇过程中的真实性、合规性监管。《通知》将于 2011 年 8 月 1 日起实施。

《通知》对外商投资企业进行资本金结汇时需提交的材料要求提出了更多要求，加强对超过一定比例结汇额后结汇申请材料的真实性核查和结汇后监管，并要求限制备用金结汇，以及要求监管部门建立健全外商投资企业违规结汇黑名单制度，列入黑名单的外商投资企业的资本金结汇将面临重点核查。

目前，外商投资企业外汇资本金结汇名目繁杂，成为直接投资监管的难点。例如，通过虚假增值税发票或虚假合同骗取资本金结汇、以备用金名义对资本金分拆结汇、以归还银行贷款为名申请资本金结汇等。《通知》基本上对这些实践中惯用的规避资本金结汇监管的方

capital settlement, in an effort to streamline administration of FIE foreign exchange capital settlement. Note that the Circular will also impact the investment activities of non-investing FIEs with foreign exchange capital.

法进行了明文禁止或限制,在规范外商投资企业资本金结汇的同时,也将对那些非投资性的外商投资企业直接利用资本金开展对外投资业务带来障碍。

INSURANCE / 保险

CIRC Strengthens Administration of Insurance Companies' Capital Reserve

保监会强化保险公司资本保证金管理

As some insurance companies are engaged in improper activities, including frequently changing banks for the deposit of their reserve fund, in order to prevent the capital reserve from suffering unnecessary risks, CIRC recently revised the *Interim Measures for the Administration of Capital Reserve of Insurance Companies* (the "Interim Measures") and promulgated the *Measures for the Administration of Capital Reserve of Insurance Companies* (the "Measures"), which took effect as of July 7, 2011.

In general, the Measures set forth higher requirements for the administration of capital reserve of insurance companies. For example, the Measures impose higher qualification requirements for banks that are qualified to keep capital reserve, stipulating that an insurance company must choose at least two nationwide domestic funded commercial banks with net assets of at least RMB20 billion at the end of the previous year (while the Interim Measures only require an insurance company to choose one to three nationwide domestic funded commercial banks with registered capital of at least RMB4 billion) to deposit their capital reserve. In addition, capital reserve deposits are prohibited by the Measures to be pledged for financing purposes.

鉴于目前保险公司存在频繁转存资本保证金等不规范的操作,为避免资本保证金出现不必要的风险,保监会近日对《保险公司资本保证金管理暂行办法》(“《暂行办法》”)进行了修订,制定了《保险公司资本保证金管理办法》(“《管理办法》”),《管理办法》自2011年7月7日起生效。

总体上,《管理办法》提高了保险公司资本保证金的管理要求。例如,《管理办法》对资本保证金的存放银行提出了更高的资质要求,要求保险公司选择两家以上前一年年末净资产不少于200亿元人民币的全国性中资商业银行(《暂行规定》仅要求选择1至3家注册资本金不少于40亿元人民币的全国性中资商业银行)。此外,《管理办法》禁止资本保证金存款用于质押融资。

For further information, please write us at inquiry@hanyilaw.com.

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