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PE & VC / 私募股权及创业投资

Registration of Private Equity Funds Suspended in Major Cities Amid A Crackdown of Non-Compliant Investment Activities 北京等地暂停含私募基金在内的投资类企业注册

This month it is reported that the Administration for Industry and Commerce ("AIC") of Beijing issued a notice to suspend the approval for enterprises and self-employed businesses to use names containing "investment", "assets", "capital", "holding", "fund", "wealth management", "financial lease", "non-financial guarantee" or other similar wordings. Since the Asset Management Association of China ("AMAC") requires that names of private equity ("PE") funds and their management companies must contain wordings like "investment" or "investment management", such notice virtually suspends the registration of PE funds or related enterprises. It is also reported that the State Administration for Industry and Commerce ("SAIC"), as well as the AICs of other major cities such as Shanghai and Tianjin, have also suspended PE fund enterprises registration. However, till now none of

the relevant AICs has made any official announcement on this matter.

Recently, there is an obvious trend that regulatory authorities are strengthening the regulation of PE industry: AMAC released several self-discipline rules for PE industry in 2015 and 2016 and the China Securities Regulatory Commission ("CSRC") just confirmed that the listing of PE institutions on the National Equities Exchange and Quotations (NEEQ) has been suspended. It is suspected that the intention behind this registration suspension is to further strike unregulated investment activities and to promote a healthier regulatory environment for the relatively young PE industry in China. The suspension period does not seem likely to last long, though the exact timing is not yet known.

本月有消息称,北京工商局发文暂停核准包含“投资”、“资产”、“资本”、“控股”、“基金”、“财富管

理”、“融资租赁”、“非融资性担保”等字样的企业和个体户名称。而根据中国证券投资基金业协会(“基金业协会”)的要求,私募基金及管理人必须包含投资、资产管理等字样,因此,则北京市工商局实质上暂停了私募基金类企业的登记注册。消息同时称,国家工商总局已暂停了本局内私募基金注册,而上海、天津等重点城市和地区的地方工商局也已实质上暂停私募注册。截至目前,我们尚未看到相关工商局正式公开的文件。

最近各部门对私募行业的监管呈明显的加强态势,2015年及2016年基金业协会发布多项私募行业自律规则、近日证监会证实叫停私募股权投资机构挂牌新三板。此次大范围叫停投资类企业注册的初衷应该是为了进一步整顿近年来私募行业的乱象,以期促进私募行业的健康发展。我们预计暂停期限应该不会太长,但具体时间尚不得而知。

Shanghai Promised to Compensate Angel Investors for Up to RMB3 Million per Unsuccessful Investment 上海将对天使投资损失进行补偿、单个项目最高补偿人民币300万元

On December 29, 2015, Shanghai Science and Technology Committee, together with Shanghai Finance Bureau and Shanghai Development and Reform Commission, issued the *Interim Measures on Management of Angel Investment Risks Compensation* (the "Measures"), aiming to expand the angel investment scale, to boost mass innovation and entrepreneurship, and to make Shanghai a technology innovation center with global influence. The Measures will become effective on February 1, 2016 and valid for two years. Previously, Jiangsu, Guangdong and other provinces have also released similar policies, the amount of compensation under which is typically capped at a number from hundreds of thousands to a few millions of RMB for each investment.

Under the Measures, the Shanghai government will compensate venture capital institutions for up to 60% of their actual losses caused by investments in scientific and technological enterprises at seed stage or up to 30% if at start-up stage. The investments qualified for compensation must be made after January 1, 2015 and the amount of compensation shall not exceed RMB3 million for each investment and RMB6

million for each investment institution per year.

As defined in the Measures, seed stage enterprises are those incorporated for no more than 3 years, with no more than 50 employees, total assets of no more than RMB5 million and annual sales or annual revenues of no more than RMB5 million, while start-up enterprises are those with no more than 200 employees, total assets of no more than RMB20 million and annual sales or annual revenues of no more than RMB20 million. Shanghai's relevant local standards shall apply when determining whether those enterprises are "scientific and technological enterprises". It is also noteworthy that, only investment institutions that have completed the filing process with Shanghai's venture capital administration in accordance with the *Interim Management Measures on Venture Capital Investment Enterprises* are qualified to apply for the compensation.

为了使上海建设成为具有全球影响力的科技创新中心、壮大天使投资规模、促进“大众创业、万众创新”,2015年12月29日,上海市科学技术委员会联合上海市财政局、上海市发展和改革委员会发布《上海市天使投资风险补偿管理暂行办法》(“《办法》”),自2016

年2月1日起施行,有效期2年。此前,江苏、广东等省份也出台过类似的补偿政策,单个项目的补偿额度在人民币几十万至几百万不等。

根据《办法》,上海市政府对创业投资机构于2015年1月1日后投资种子期、初创期科技型企业项目所发生的投资损失,可分别按不超过实际投资损失的60%、30%给予补偿。每个投资项目的投资损失补偿金额不超过人民币300万,单个投资机构每年度获得的投资损失补偿金额不超过人民币600万元。

《办法》所称的种子期企业,是指成立时间不超过3年、职工人数不超过50人,且资产总额不超过500万元人民币、年销售额或营业额不超过500万元人民币;初创期企业,是指职工人数不超过200人,且资产总额不超过2,000万元人民币、年销售额或营业额不超过2,000万元人民币;科技型企业,是指按照上海市科技企业相关标准界定的企业。另外需注意的是,申请风险补偿的投资机构必须依据《创业投资企业暂行管理办法》在上海市创业投资备案管理部门完成备案。

CAPITAL MARKET / 资本市场

CSRC Issued New Rules to Restrict Share Sale by Major Shareholders and Senior Executives of Listed Companies 证监会发布上市公司股东高管“减持新规”

On January 7, 2016, CSRC promulgated the *Regulation on Shareholding Reduction by Major Shareholders, Directors, Supervisors and Senior Management of Listed Companies* (the "Regulation"), which became effective since January 9, 2016.

The Regulation applies to sale of shares by controlling shareholders and shareholders holding more than 5% of shares ("Major Shareholders") as well as directors, supervisors and senior management of listed companies, but excludes the sale by Major Shareholders of the shares bought from the secondary market. Pursuant to the Regulation, Major Shareholders shall disclose their share reduction plans at least 15 trading days before selling their shares through centralized price bidding transaction at the stock exchange. Moreover, the aggregate amount of shares sold by a Major Shareholders of a listed company within any three month period shall not exceed 1% of the total shares of such company. In addition, even if a shareholder ceases to be a Major Shareholder due to share transfer

through agreement, the transferor and transferee shall continue to comply with the above disclosure and share reduction requirements applicable to Major Shareholders within the 6 months period after the share reduction. Furthermore, the Regulation also specifies the situations under which directors, supervisors and senior management shall not sell their shares.

Subsequently, Shanghai Stock Exchange and Shenzhen Stock Exchange issued the *Circular on Implementing Matters relating to the Regulation on Shareholding Reduction by Major Shareholders, Directors, Supervisors and Senior Management of Listed Companies* respectively to implement the Regulations.

2016年1月7日，证监会发布《上市公司大股东、董监高减持股份的若干规定》（“《规定》”），自2016年1月9日起施行。

《规定》适用于上市公司控股股东和持股5%以上股东（“大股东”）、董监高减持股份的情形。大股东减持其通过二级市场买入的上市公司股份，不适用《规定》。根据《规定》的要求，上市

公司大股东通过证券交易所集中竞价交易减持股份，需提前15个交易日披露减持计划。上市公司大股东在三个月内通过证券交易所集中竞价交易减持股份的总数，不得超过公司股份总数的1%。此外，通过协议转让方式减持股份并导致股份出让方不再具有上市公司大股东身份的，股份出让方、受让方应当在减持后六个月内继续遵守签署披露及约束机制。就董监高而言，《规定》主要明确了董监高不得减持股份的情形。

此后，沪深交易所分别发布《关于落实〈上市公司大股东、董监高减持股份的若干规定〉相关事项的通知》，进一步细化上述减持规则。

FREE TRADE ZONE POLICIES / 自贸区政策

New Cross-Border Financing Policy Expanded to Four FTZs 全口径跨境融资政策扩至四大自贸区

On January 22, 2016, the People's Bank of China ("PBOC") issued the *Circular on the Expansion of the Pilot Program for the Macro-Prudential Management of Overall Cross-border Financing* (the "Circular") to expand the scope of the pilot program for macro-prudential management of cross-border financing and integration of RMB and foreign currency. Such pilot program is now applicable to 27 banks (the "Pilot Financial Institutions") and non-financial enterprises (excluding government financing vehicles and real estate enterprises) (the "Pilot Enterprises") incorporated in the four free trade zones ("FTZs"), including Shanghai FTZ, Guangdong FTZ, Tianjin FTZ and Fujian FTZ.

According to the Circular, the Pilot Enterprises and the Pilot Financial Institutions may conduct cross-border financing in both RMB and foreign currency at their discretion, as long as that they follow the macro-prudential

rules and the amount involved is within the cross-border financing cap that is calculated based on their capital or net assets. Meanwhile, the Pilot Enterprises and the Pilot Financial Institutions are only required to conduct prior or afterwards filings instead of prior approvals for their foreign debts. In addition, foreign invested enterprises or banks in the pilot program may choose to apply either this new regime or the existing cross-border financing regime also applicable to them.

In February 2015, Shanghai FTZ began to, as the first region in China, allow domestic entities to conduct overseas financing based on certain risk conversion multiples and according to the macro-prudential rules (see the March 2015 issue of our *China Regulatory Updates for a brief introduction*). Aside from promoting the aforesaid management regime to support domestic entities' overseas financing, the Circular has also

reflected the country's recent effort to integrate RMB and foreign currency management. Furthermore, the Circular adopts various other measures, such as a system monitoring macro risks of cross-border financing, based on the previous pilot program in Shanghai FTZ in order to control systematic financial risks.

2016年1月22日，中国人民银行发布《中国人民银行关于扩大全口径跨境融资宏观审慎管理试点的通知》（“通知”），决定自2016年1月25日起，面向注册在上海、天津、广东、福建四个自贸区的企业（仅限非金融企业，且不包括政府融资平台和房地产企业，“试点企业”）及27家银行金融机构（“试点金融机构”）扩大本外币一体化的全口径跨境融资宏观审慎管理试点。

《通知》规定，在遵守宏观审慎规则的前提下，在与其资本或净资产挂钩的跨境融资上限内，试点企业和试点金融机构可按规定自主开展本外币跨境融资；同时取消对试点企业和试点金融机构的外债事前审批，改为事前签约备案或事后备案。另外，试点中的外商投资企业

业、外资银行可在现行跨境融资管理模式和《通知》模式下任选一种模式适用，并向管理部门备案。

2015年2月，上海自贸区首先开始允许境内主体根据宏观审慎规则依据风险转

换因子进行境外融资（相关介绍可参见本所2015年3月刊*China Regulatory Updates*）。此次通知除推广此种管理模式支持微观主体跨境融资外，更具有本外币管理一体化的特点，同时《通

知》在上海自贸区试点的基础上采取了跨境融资宏观风险监测指标体系等措施，以控制系统性金融风险。

ANTI-MONOPOLY / 反垄断

NDRC Sought Public Comments for Anti-Monopoly Guidelines on IPR Abuse 国家发改委就知识产权反垄断指南征求意见

Following the *Provisions on the Prohibition of the Abuse of Intellectual Property Rights (IPR) to Eliminate or Restrain Competition* released by SAIC in May 2015 (see the May 2015 issue of our *China Regulatory Updates* for a brief introduction), on December 31, 2015, the National Development and Reform Commission (“NDRC”) published the *Anti-monopoly Guidelines on the Abuse of Intellectual Property Rights (Draft for Comment)* (the “Anti-monopoly Guidelines”) to seek public comments.

NDRC is the major authority in charge of regulating IPR-related monopoly agreement and abuse of dominant market position. In the Anti-monopoly Guidelines, NDRC specifies the situations that may constitute monopoly agreements: (i) IPR agreements between competing parties related to joint research and development, patent pools, cross-licensing or standard setting; (ii) IPR agreements between non-competing parties related to price restriction, exclusive grant-back, non-challenge clause or other restricted clauses. In

addition, NDRC also specifies factors needed to be considered when determining whether an IPR holder has dominant position in the relevant market and whether it has abused such position.

The background of this Anti-monopoly Guidelines is the famous abuse of dominance case of Qualcomm Inc. in 2015, which has triggered an upsurge of complaints and lawsuits of similar cases. The current anti-monopoly laws, however, do not provide sufficient guidance on how to regulate IPR-related anti-monopoly cases. Once promulgated, the Anti-monopoly Guidelines are expected to guide the enforcement of IPR related anti-monopoly laws, provide reasonable expectation for market players, and lower the compliance costs for relevant enterprises.

继国家工商总局于2015年公布《关于禁止滥用知识产权排除、限制竞争行为的规定》（相关介绍可参见本所2015年5月刊*China Regulatory Updates*）后，国家发改委于2015年12月31日发布《关于滥用知识产权的反垄断指南（征

求意见稿）》（“《反垄断指南》”），向社会征求意见。

发改委所主管的知识产权领域的垄断行为主要涉及垄断协议和滥用市场支配地位。就如何判断是否构成垄断协议，《反垄断指南》解释了在具有竞争关系的经营者达成的协议中，联合研发、专利联营、交叉许可和标准制定四类情形，以及在不具有竞争关系的经营者达成的协议中，价格限制、独占性回授、不质疑条款和其他限制条款四类情形。涉及知识产权的滥用市场支配地位行为，《反垄断指南》明确了判断知识产权权利人在相关市场上是否具有支配地位、是否滥用支配地位的考量因素等。

《反垄断指南》的出台背景是2015年年初轰动一时的高通公司滥用市场支配地位案件。高通案触发了类似案件的举报和诉讼热潮，但《反垄断法》对于知识产权领域的反垄断案件的规定并不足以提供足够的规制。《反垄断指南》的出台后将为此类反垄断执法和相关市场主体提供指导以及合理预期，降低企业的合规成本。

INTERNET FINANCE / 互联网金融

PBOC Tightened Regulation over Non-banking Online Payment Institutions 中国人民银行发布《非银行支付机构网络支付业务管理办法》

On December 28, 2015, PBOC issued the *Administrative Measures on Online Payment Services of Non-banking Payment Institutions* (the “Measures”) for implementation as of July 1, 2016.

The Measures expressly prohibit non-banking payment institutions that have been approved to provide online payment services (“Payment Institution”) from operating, directly or indirectly, businesses such as security, insurance, credit and loan, financing, wealth management, guarantee, trust, currency exchange, and cash deposit and withdrawal. Meanwhile, Payment Institutions shall not open payment accounts for financial institutions or institutions that engage in financial businesses such as credit and loan, financing, wealth

management, guarantee, trust and currency exchange. In addition, the Measures have set up, among others, real-name system for payment accounts, classification and quota management regime for individual payment accounts and categorized regulation regime for payment institutions. Moreover, the Measures include specific provisions to protect customers’ rights to information as well as rights related to information security and fund security.

The Measures are issued to support and implement the online payment regulation requirement under the *Guiding Opinions on Promoting the Healthy Development of Internet Finance* issued by PBOC and other nine government authorities in July

2015. The various restrictions on the service scope of payment institutions under the Measures may well likely impact the business models of internet finance in the future.

2015年12月28日中国人民银行发布《非银行支付机构网络支付业务管理办法》（“《办法》”），自2016年7月1日起实施。

《办法》明确规定获准从事网络支付业务的非银行支付机构（“支付机构”）不得经营或者变相经营证券、保险、信贷、融资、理财、担保、信托、货币兑换、现金存取等业务。同时，支付机构不得为金融机构，以及从事信贷、融资、理财、担保、信托、货币兑换等金融业务的其他机构开立支付账户。此外，《办法》建立了支付账户实名制、个人支付账户分类限额管理、支付机构

分类监管等模式，同时从用户的知情权、信息安全和资金安全等方面做出了保障消费者合法权益的具体规定。

《办法》是对2015年7月人民银行等十

部门联合发布的《关于促进互联网金融健康发展的指导意见》关于互联网支付监管要求的配套落实。《办法》对支付机构业务范围的限制未来可能会对现有

的互联网金融模式带来一定的影响。

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