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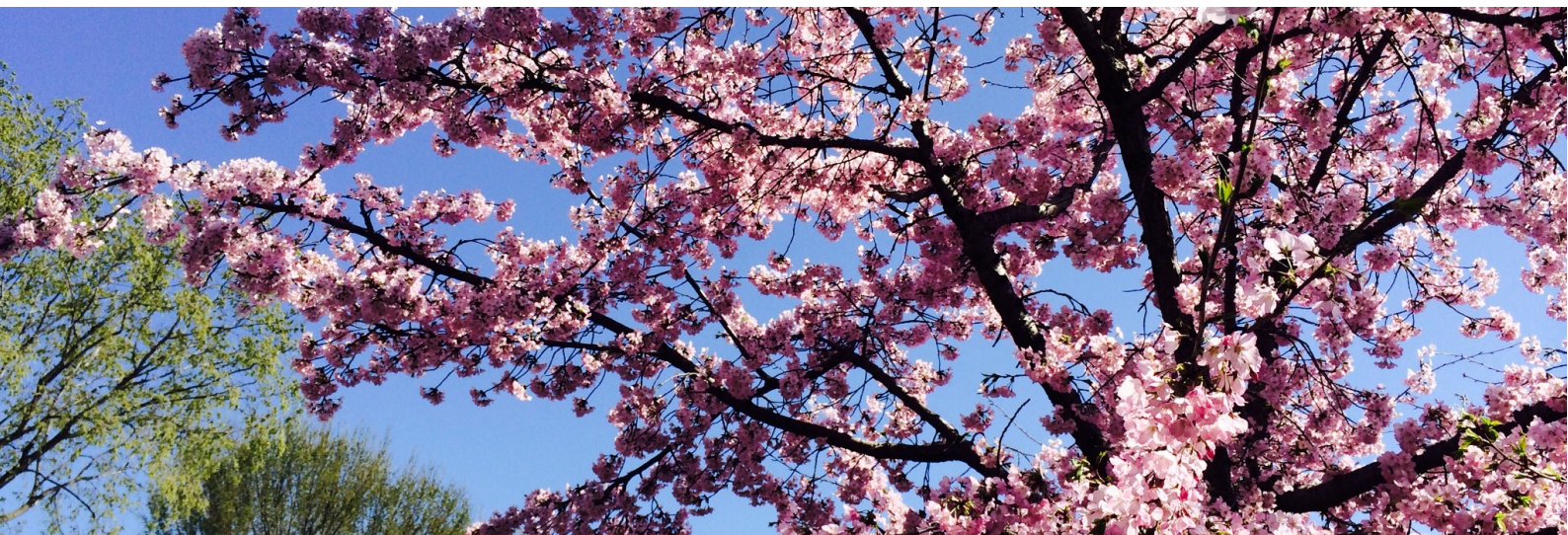


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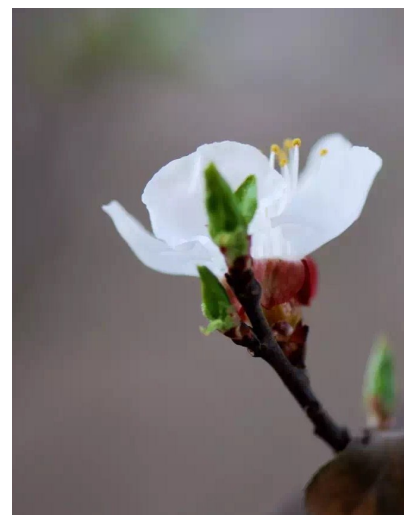
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PE & VC / 私募股权及创业投资

Recent Regulatory Initiatives by AMAC 基金业协会近期监管动态

The Asset Management Association of China ("AMAC") has organized several explanatory sessions in such cities as Beijing, Shanghai, Shenzhen, Suzhou, and Hangzhou to clarify certain practical issues arising from or in connection with the *Announcement on Certain Issues Concerning Further Regulation of Registrations for Privately-Placed Fund Managers* (please refer to March 2016 issue of our *China Regulatory Updates* for more details) newly released last month. Rumors say that a formal AMAC report including all typical questions as well as the corresponding answers will be published after the sessions are finished.

On the one hand, AMAC emphasized that the registration requirement is definitely not a government approval or an administrative permit in disguised form and its main administrative focus is in process and post effect supervision. AMAC publicly expressed its negative attitude towards such practices as registering mini-fund products in a rush by a private fund manager just in order to maintain its fund manager's qualification. On the other hand, AMAC reaffirmed the private fund managers' duty to file required information on continuous and timely manners and the information provided should be true, accurate and complete. AMAC has provided some preliminary answers to such most concerned practical issues as specific requirements on the legal opinion for the registration of fund

managers and the issuing law firms' qualifications, the name of fund products to be registered, the situations where the registered address is inconsistent with the actual business place, internal control and risk management system, among others.

AMAC has further issued the *Relevant Issues Concerning Registration of Privately-Placed Funds (VIII)* to specify the requirements on legal opinion and law firms that are qualified to issue the required legal opinions, and set general guidelines for law firms as to how to conduct a due diligence investigation on the risk management and internal control system of a private fund manager.

Furthermore, AMAC also mentioned on several other occasions that in addition to the *Guidelines on Internal Control and the Measures for Administration of Information Disclosure* that had already been issued, a series of other operating rules in connection with fund raising activities, investment consulting services to be provided by fund managers and trustee and custodian arrangements would soon be released in an effort to improve and streamline the regulatory framework for private equity and venture capital funds.

近期, 中国证券投资基金业协会(“基金业协会”)在北京、上海、深圳、苏州、杭州等地召开了私募基金登记备案宣讲会, 针对今年2月初发布的登记新规《关于进一步规范私募基金管理人登

记若干事项的公告》(相关内容请参见我所2016年3月刊*China Regulatory Updates*)及实际操作中出现的相关问题予以进一步说明和解释。据悉, 基金业协会将于近期各地的巡回答疑结束后, 统一出台相关问题的答疑报告。

一方面, 协会再次强调登记备案不是行政审批, 更不是变相行政审批, 其监管思路是事中、事后的持续监督, 并且对于为保住基金管理人资格而匆忙进行产品备案的“保壳”、“倒壳”等行为明确表示不支持甚至是反对。另一方面, 协会重申了基金管理人持续进行信息报告义务, 并应保证报送信息的及时、真实、准确和完整。此外, 对于市场较为关心的法律意见书的具体要求、律所和律师资质、拟备案基金名称、注册地址与实际经营地址不一致、内控及风控等诸多实践性事项, 基金业协会亦作出了初步解答。

基金业协会还于3月18日发布了《私募基金登记备案相关问题解答(八)》, 对法律意见书的基本要求及出具法律意见书的律所资质的要求进行了重申, 并对律所在对申请机构的风险管理和内部控制制度开展尽职调查时的核查事项提出了指导性意见。

此外, 基金业协会在不同场合也分别提到, 除了已经正式发布的私募基金《内部控制指引》和《信息披露管理办法》外, 还即将发布《募集行为管理办法》、《合同指引》, 《私募基金管理人从事投资顾问服务业务管理办法》、《托管与保管管理办法》以及《外包服务管理办法》等一系列配套规则, 以期完善私募基金法律规范体系。

CAPITAL MARKET / 资本市场

CSRC Officially Responded to Cancellation of Strategic Emerging Board 证监会首次回应删除战略新三板

The Shanghai Stock Exchange has been working on establishing the strategic emerging board since September 2013, and earlier news showed the preparation work had been almost done. But it was reported on March 15, 2016 that as one of the proposed 57 amendments, establishment of the strategic emerging board was deleted according to CSRC's opinion from the draft outline of the national 13th five-year plan. The industry was then shocked.

On March 25, the spokesman of CSRC officially responded in a press

conference with respect to the proposed deletion "Accelerating the development of strategic emerging industries has always been the country's strategic policy. We, CSRC, always focus on promoting the development of strategic emerging industries; and with the propulsion of multi-tier capital market, the strategic emerging industries will be increasingly promising. The national 13th five-year plan should include the overall development trends and major events need to be accomplished in next five years. Concerning the establishment of the strategic emerging board still needs further in-

depth studies and analyses, thus there is no need to include it in the draft outline." As we can see from this response, establishment of the strategic emerging board still meets the country's long term strategy, but whether and when it will be put in place remains unclear. It is believed by the market that the strategic emerging board is the most effective way for overseas-listed Chinese firms, emerging industries and other innovative enterprises to go public in the domestic market. Thus, the suggested deletion of the strategic emerging board may force those overseas-listed Chinese firms which

wish to return to A stock market in a short time to seek for other alternatives, such as directly listing on the market or choosing the back-door listing, or turning to the National Equities Exchange and Quotations.

上海证券交易所自2013年9月起着手研究设立战略新兴板的事宜，且此前的公开信息显示上交所对战略新兴板的准备已经进入后期阶段，但就在3月15日，有消息称，“十三五”规划纲要草案拟修改57处，其中一条明确写着：根据证监会意见，删除“设立战略性新兴产业

板”。消息一出，引起业界巨大反响。

3月25日，证监会发言人在新闻发布会上就该项问题作出了正面回应，回应内容如下：“加快培育和发展战略性新兴产业，一直是国家既定的战略方针。我会始终重视支持战略性新兴产业的发展，随着多层次资本市场建设的推进，资本市场对战略性新兴产业的支持力度肯定还会不断加大。‘十三五’规划纲要判断未来5年的发展大趋势、确定大方向、明确要办的大事。设立战略新兴产业板的具体问题，还要做深入研究论证。对于尚在研究中的具体工作，没有

必要列入纲要”。该回应表明战略新兴板的设立仍具有一定的可能性，但最终是否会设立以及设立的时间节点则处于不明朗的状态。战略新兴板是中概股公司及其他新兴产业及创新型企业在国内上市的有效渠道，而其设立计划的搁浅可能会导致希望在短期内回归A股的中概股公司选择直接上市、借壳上市的方式或转战新三板。

REAL PROPERTY / 不动产

Trial Measures Concerning Mortgage of Rural Real Property Released 农村“两权”抵押贷款试点办法印发施行

On March 24, the People's Bank of China together with other competent government authorities issued the *Interim Measures for Mortgage Loans Concerning Rural Land Contractual Operating Rights on a Trial Basis* and the *Interim Measures for Mortgage Loans Concerning Farmers' Housing Property Rights on a Trial Basis* (together, the "Measures"). The Measures set out specific requirements for financial institutions, pilot areas and relevant departments to implement the pilot work in terms of competent borrowers, loan management, risk compensation, other corresponding arrangements, the monitoring and assessment of pilot areas, etc. The pilot regions for mortgage of rural land contractual operating rights include Daxing district of Beijing municipality and some other 231 pilot counties (including county-level cities and districts), and the pilot regions for mortgage of farmer's housing property rights include Jixian county of Tianjin municipality and some other 58 pilot counties (including county-level cities and districts).

The Measures provide clearly that the mortgage pilot work concerning rural land contractual operating rights shall not change the nature of the public ownership of the land concerned, not break through the red line of

agricultural land, and not damage the farmers' interests. Furthermore, there shall be no dispute over the land ownership, land use right, land contractual operating right, housing property, or house sites that are to be mortgaged. Lenders should take various factors into consideration when determining the mortgage rate, line of credit, loan interest rate and the length of maturity.

Although the Measures represent a major positive move, the actual effects of the pilot work remain to be seen, especially there are still restrictions on the mortgage of farmer's housing property right. According to the Measures, when realizing the mortgage, the assignee of the mortgaged house will generally be limited to members in the same collective group and the assignment itself should conform to the principle that one household can only have one house site, which may negatively affect the financial institutions' willingness and motive to extend credit to farmers.

为稳妥推进农村承包土地的经营权和农民住房财产权（“两权”）抵押贷款试点，中国人民银行会同相关部门于3月24日发布《农村承包土地的经营权抵押贷款试点暂行办法》和《农民住房财产权抵押贷款试点暂行办法》（合称

“《办法》”）。《办法》从贷款对象、贷款管理、风险补偿、配套支持措施、试点监测评估等多方面，对金融机构、试点地区和相关部门推进落实“两权”抵押贷款试点明确了政策要求。其中，农村承包土地经营权的试点地区包括北京市大兴区在内的232个试点县（市、区），农民住房财产权的试点地区包括天津市蓟县在内的59个试点县（市、区）。

《办法》明确，农村承包土地的经营权抵押贷款试点坚持不改变土地公有制性质、不突破耕地红线、不损害农民利益、不层层下达规模指标。同时，用于抵押的承包土地、房屋所有权及宅基地使用权应当不存在权属争议，且贷款人应综合考虑各项因素合理自主确定“两权”抵押贷款抵押率、实际贷款额度、贷款利率以及贷款期限。

《办法》对于农村“两权”突破实际效果还有待观察。尤其是《办法》对于农民住房财产权的抵押依然存在较大的限制。根据《办法》，因借款人未履行到期债务等情形需要行使抵押权、变卖或拍卖相关抵押房产的，受让人的范围原则上应限制在相关法律法规和国务院规定的范围内（即，受让人原则上仅限于本集体成员、且需符合一户一宅的原则）。该项限制将在一定程度上影响到金融机构放贷的积极性。

TAXATION / 税收

VAT to Replace Business Tax on Nationwide Basis 营改增试点将全面推行

On March 24, 2016, the Ministry of Finance and the State Administration of Taxation jointly released the *Notice on Comprehensively Implementing the Pilot Program of Replacing Business Tax with Value-Added Tax* and a

series of supporting policies, which announce that the pilot program of replacing business tax with value-added tax (“VAT”) will be implemented nationwide since May 1, 2016. The nationwide pilot program mainly

includes industries of construction, real estate, financial, consumer service, among others. To specify, the tax rate for construction and real estate industry is 11% and the tax rate for financial and consumer service

industry is 6%.

Generally speaking, this tax reform will reduce the overall tax burden for all industries concerned. However, the tax burden for certain specific categories of enterprises may slightly be increased due to the difference of capital structure, operation conditions, specific business/service involved, tax breaks and other aspects among different industries. For instance, according to a professional analysis, the tax burdens for residential real estate developers and construction industry are likely to increase or be flat depending on their business model, while tax burdens for enterprises engaged in banking, entertainment, asset management and the like may slightly be reduced or will generally remain unchanged.

Quite a few transitional measures are expected to be issued in order to support the smooth implementation of this tax reform. It is reported that the next step will be the formal amendments to the current VAT rules by which time the business tax will be officially abolished.

2016年3月24日，财政部和国家税务总局联合发布《关于全面推开营业税改征增值税试点的通知》等一系列配套文件，明确自2016年5月1日起，在全国范围内全面推开营业税改征增值税（“营改增”）试点，将建筑业、房地产业、金融业、生活服务业等行业全面纳入试点范围，由缴纳营业税改为缴纳增值税。其中，建筑业和房地产业适用11%的税率，金融业和生活服务业适用6%的税率。

总体来看，营改增将会带来整体税负的

下降。但因为不同行业的资本构成、经营状况、涉及的具体业务/服务、税收减免政策等不同，有些企业的税负也可能反而会增加。比如，有专业机构预期住宅房地产开发者、建筑业的税负根据其商业模式的不同可能会持平或增加，而从事银行业、娱乐业、资产管理等业务的企业的税负预期可能会保持不变或略有下降。

营改增税制改革的实施仍需要采取不少过渡措施。据报道，下一步增值税的新规或修订将在该基础上进行制定，届时营业税也将会被正式废止。

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