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TABLE OF CONTENTS / 本期内容

PE&VC / 私募股权及创业投资

Shenzhen Launched New Measures for Pilot QFLP Program / 深圳
QFLP新规发布 2

CAPITAL MARKET / 资本市场

NEEQ Announced Key Review Points for Material Asset Restructuring
of NEEQ-Listed Companies / 全国股转系统发布《挂牌公司重大资产重
组审查要点》 3

TAXATION / 税法

SAT Clarified Source-Based Withholding of Enterprise Income Tax on
Non-Resident Enterprises / 国税总局就非居民企业所得税源泉扣缴管理
发布新规 3



PE&VC / 私募股权及创业投资

Shenzhen Launched New Measures for Pilot QFLP Program
深圳QFLP新规发布

2017年9月22日，深圳市金融办、市经贸信息委、市市场和质量监管委及前海管理局联合发布了深圳QFLP新规——《深圳市外商投资股权投资企业试点办法》（“《试点办法》”）。《试点办法》在深圳市此前于2012年11月发布的《关于本市开展外商投资股权投资企业试点工作的暂行办法》（“原《暂行办法》”）的基础上进行了明确、修改和补充，并从2017年12月1日起取代原《暂行规定》。相比原有的QFLP政策，《试点办法》中的以下内容值得投资者特别关注：

1. 扩大了试点范围和管理模式：原《暂行办法》仅明确允许外商投资的股权投资管理企业（“试点管理企业”）管理该管理企业发起设立的外商投资股权投资基金（“试点基金”），即“外资管外资”的管理模式。《试点办法》除保留了“外资管外资”的模式外，还对原《暂行办法》作出了以下补充：
 - (a) 明确除试点基金外，试点管理企业还可以发起设立或受托管理境内私募股权、创业投资基金（即，“外资管内资”）；以及
 - (b) 符合条件的境内私募股权、创业投资基金管理公司²可以发起设立或受托管理试点基金（即，“内资管外资”）。
2. 明确了试点基金有限合伙人的条件：对于试点企业的有限合伙人应当具备的条件，《试点办法》总体上参照基金业协会就合格投资者的标准所设置的条件，针对不同类别的投资者设置了相应的准入门槛。
3. 限制基金投向和普通合伙人的关联机构作为有限合伙人时的出资比例：《试点办法》明确，外商投资股权投资企业应遵循《外商投资产业指导目录》，直接投资于实业，禁止以基金中的基金（FOF）模式设立试点管理企业。如外商投资股权投资企业的普通合伙人和有限合伙人为同一控制人的，该同一控制人的合计出资比例不得超过50%。
4. 完善了登记备案、事后监管：《试点办法》明确要求试点管理企业和试点基金需要按照AMAC的要求在AMAC进行登记或备案，同时还规定了托管银行对于外商投资股权投资管理企业的所有项目的收入或利润进行事后监管

On September 22, 2017, Shenzhen Financial Services Office, Shenzhen Economy, Trade, and Information Committee, Shenzhen Market Supervision Administration and Qianhai Administration Bureau jointly released new rules for the pilot QFLP program in Shenzhen, the *Measures of Pilot Program for Foreign Invested Equity Investment Enterprises in Shenzhen* (the “Measures”). The Measures were formulated based on the *Interim Measures for Launching a Pilot Program for Foreign Invested Equity Investment Enterprises in Shenzhen* (the “Original Measures”) issued in November, 2012 and will replace the Original Measures from December 1, 2017. Compared to the previous QFLP policies, the Measures have made the following noteworthy clarifications, supplements and amendments:

1. Expanded the scope and management methods for pilot funds: The Original Measures only allowed a foreign invested private equity fund management enterprise (“Pilot FM”) to manage the foreign invested private equity or venture capital funds (the “Pilot Funds”) sponsored by the Pilot FM (i.e., the “foreign for foreign” management mode). According to the Measures, the following management modes are now permitted:
 - (a) The “foreign for domestic” management mode: In addition to the Pilot Funds, a Pilot FM is now also allowed to manage domestic-funded private equity and venture capital funds; and
 - (b) The “domestic for foreign” management mode: All qualified domestic-funded private equity and venture capital fund management enterprises¹ are permitted to sponsor or manage Pilot Funds.
2. Clarified qualifications applicable to limited partners of a Pilot Fund: With regard to the Pilot Funds taking the form of limited liability partnership, the Measures set different entry standards for different types of investors who will be the limited partners of such funds, which are generally consistent with those of the qualified investors as required by the Asset Management Association of China (“AMAC”).
3. Set limitations on the investment direction of a Pilot Fund and the maximum investment amount of limited partners under common control with the GP: The Measures specifically required all Pilot Funds to abide by the *Catalogue of Industry Guidance for Foreign Investments*, to invest directly in companies having substantial businesses, and not to invest in any Pilot FM. For all limited partners of a Pilot Fund who are under common control with the general partner of the fund, the total investment amount of such limited partners together with that of the general partner shall not exceed 50% of the total capital of the fund.
4. Streamlined the registration and filing system and post effect supervision: The Measures expressly required the Pilot FMs and Pilot Funds to register or file with AMAC in accordance with prevailing rules and practice. The trustee banks are required to conduct post effect supervision over

¹To manage a Pilot Fund, a domestic-funded fund manager shall (i) be registered in Shenzhen and filed with AMAC, (ii) have proprietary assets of no less than RMB500 million for more than 6 months or have managed assets of no less than RMB1 billion during the last financial year, and (iii) have not been penalized by any judicial or regulatory authority during the past 3 years.

²即需在基金业协会登记6个月以上，上一完整会计年度具备自有资产规模不低于5亿元人民币或管理资产规模不低于10亿元人民币，3年内未受司法机关或相关监管机构处罚，且注册于深圳。

的职责。

《试点办法》响应了国家扩大对外开放、“扩流入、控流出”的政策导向，拓宽了试点的管理模式，有利于进一步吸引境内外投资人参与试点。但遗憾的是，《试点办法》未能就普通合伙人是外商投资企业、有限合伙人是境内投资人的基金的内外资性质作出认定，也未就基金能否提供贷款这一争议问题作出明确规定。

the income and profits of all projects managed by a Pilot FM.

The Measures echoed the national policies of “widening market opening to foreign investors” and “encouraging capital inflow and controlling outflow” and were intended to motivate more foreign and domestic investors to participate in the pilot program. However, the Measures failed to define the foreign/domestic nature of the funds with domestic investors as their limited partners and foreign invested enterprises as their general partners. It also failed to clarify whether the Pilot Funds can legally extend loans to other companies, which has been a rather controversial issue for private equity funds in practice.

CAPITAL MARKET / 资本市场

NEEQ Announced Key Review Points for Material Asset Restructuring of NEEQ-Listed Companies 全国股转系统发布《挂牌公司重大资产重组审查要点》

2017年10月17日，全国中小企业股份转让系统有限责任公司（“股转市场”）发布《挂牌公司重大资产重组审查要点》（“《审查要点》”）和《挂牌公司重大资产重组在审项目审查进度表》，以进一步提高新三板挂牌公司重大资产重组的审查效率和透明度。

《审查要点》意图通过对内幕信息知情人报备、首次信息披露、发行股份购买资产备案等环节的审查要点进行细化，以达有效防止挂牌公司资产重组过程中的内幕交易行为的目的。《审查要点》中列举的审核重点包括目标企业的出资情况，业绩承诺和补偿、股份回购、反稀释等特殊条款，标的资产评估定价的合理性，发行股份购买资产以及配套募资等方面的合规性。

On October 17, 2017, the National Equities Exchange and Quotations Co., Ltd. (“NEEQ”) released the *Key Review Points for Material Asset Restructuring Involving NEEQ-Listed Companies* (the “Key Points”) and the *Review Progress Chart for Material Asset Restructuring Projects of NEEQ-Listed Companies under Review*, in order to further improve the efficiency and transparency of the examination and review process of the material asset restructuring projects involving NEEQ-listed companies.

The Key Points intend to further prevent NEEQ-listed companies from engaging in insider trading by clarifying and streamlining the review requirements of such key procedures involved in material asset restructuring project of NEEQ-listed companies as reporting of persons having access to inside information, initial information disclosure, and filing of the purchase of assets by offering new shares. The key review points include capital contribution of the target company, special arrangements among shareholders such as performance commitment by relevant shareholders and makeup mechanism, share redemption and anti-dilution provisions, the valuation reasonableness of the target assets, and other compliance aspects.

TAXATION / 税法

SAT Clarified Source-Based Withholding of Enterprise Income Tax on Non-Resident Enterprises 国税总局就非居民企业所得税源泉扣缴管理发布新规

2017年10月27日，国税总局发布了《关于非居民企业所得税源泉扣缴有关问题的公告》（“《公告》”），将于2017年12月1日起施行，届时包括《非居民企业所得税源泉扣缴管理暂行办法》（“《暂行办法》”）在内的若干文件和条款将被一并废止。

《公告》对原先的非居民企业所得税源泉扣缴相关规则进行了较大幅度的修订，包括取消了《暂行办法》中对扣缴义务人的合同备案要求，明确了股息的实际支付日为税款扣缴义务发生之日，以及明确了源泉扣缴所涉及的各税务机关之间的职责分配，为纳税主体和代缴义务人提供了更加明确的指引。

On October 27, 2017, the State Administration of Taxation released the *Announcement on Certain Matters Concerning Source-Based Withholding of Enterprise Income Tax on Non-Resident Enterprises* (the “Announcement”). The Announcement will take effect from December 1, 2017. A few related rules including the *Interim Measures for the Administration of Source-Based Withholding of Enterprise Income Tax on Non-Resident Enterprises* (the “Interim Measures”) will be cancelled simultaneously.

The Announcement is a major overhaul to the previous rules governing source-based withholding of enterprise income tax on non-resident enterprises. Major revisions include (i) cancellation of the contract filing requirement on tax-withholding agents as required under the Interim Measures, (ii) clarification of the actual payment date of dividends being the date when the tax withholding obligation falls due, and (iii) clear allocation of duties

among different tax authorities involved in any source-based tax withholding case, which provides clearer and more straightforward guidance to taxpayers and tax withholding agents.

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

CONTACT US

Shanghai Office
Suite 1801, Tower I, Huayi Plaza
2020 West Zhongshan Road
Shanghai 200235, China
Tel: (86-21) 6083-9800
Fax: (86-21) 6083-9811



Beijing Office
Suite B-1503
15 West Chaoyang Park Road
Beijing 100026, China
Tel: (86-10) 5867-0155
Fax: (86-10) 5867-0155
