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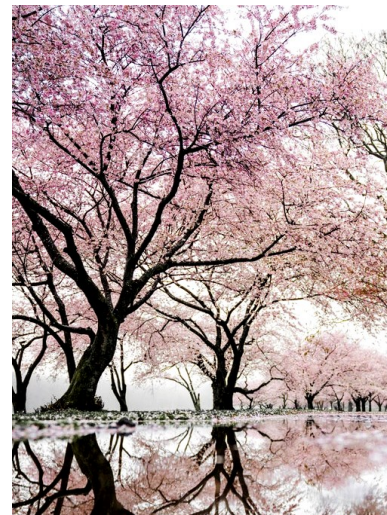
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CAPITAL MARKET / 资本市场

China Introduces Pilot Plan on Stock/Depositary Receipts Issuance by Qualified Innovative Companies 国务院正式推出创新企业境内发行股票或存托凭证试点

2018年3月30日，国务院办公厅公开发布了《国务院办公厅转发证监会关于开展创新企业境内发行股票或存托凭证试点若干意见的通知》（“《试点意见》”），对支持创新企业在境内发行上市作了系统性的制度安排。

《试点意见》对试点对象设置了较高的门槛，明确了试点企业应当是符合国家战略、掌握核心技术、市场认可度高，属于互联网、大数据、云计算、人工智能、软件和集成电路、高端装备制造、生物医药等高新技术产业和战略性新兴产业，且达到相当规模的创新企业。其中，已在境外上市的大型红筹企业，市值不低于2000亿元人民币；尚未在境外上市的创新企业（包括红筹企业和境内注册企业），最近一年营业收入不低于30亿元人民币且估值不低于200亿元人民币，或者营业收入快速增长，拥有自主研发、国际领先技术，同行业竞争中处于相对优势地位。据市场初步统计，符合要求的已上市的试点企业大概有10来家左右（未上市试点企业的范围尚难确定）。试点企业的具体标准将由证监会制定。

根据《试点意见》，符合条件的试点红筹企业可优先选择在境内发行存托凭证上市，如符合股票发行上市条件的，也可申请在境内发行股票上市；符合条件的境内注册的试点企业可申请在境内发行股票上市。值得关注的是，试点红筹企业在境内发行存托凭证上市的，须在公开发行人时对投票权差异、协议控制架构或类似的特殊安排进行充分详细的披露；试点红筹企业在境内发行股票上市的，如存在协议控制架构，证监会将会根据不同情况予以审慎处理。此外，《试点意见》还明确了存托凭证的基础制度安排，对试点涉及的信息披露、投资者保护及法律责任等事项进行了简要规定。

《试点意见》首次为红筹企业在境内发行CDR或股票提供了制度性支持，意味着试点企业在搭建红筹结构后不再只有境外上市一个单选项，而是可以在保留红筹架构（甚至是VIE）的同时另行寻求在境内上市，增加企业上市融资的灵活度，对于试点企业的投资人来说也是重大利好。不过目前试点范围有限，未来是否可能获得推广并形成制度性安排，取决于多方面的因素，还尚待观察。

此外，《试点意见》提到其将会对采取VIE结构的试点红筹企业的股票上市申请根据具体情况进行审慎处理（对于发行CDR的，则主要审查其IPO时的信息披露情况等），考虑到目前可预见的试点企业多数采取VIE结构，证监会在审核该等企业的CDR或股票发行申请时的态度（尤其在该等企业采取发行股票的方式的情况下），很可能会释放监管层对VIE结构的态度的相关信息，使市场主体对VIE结构有更明朗的预期。

证监会将在《试点意见》发布后陆续推出一系列的配套制度和监管规则，进一步开展和推进试点工作，我们将予以持续关注。

On March 30, 2018, the General Office of the State Council publicized the *Notice on Forwarding Several Opinions of the China Securities Regulatory Commission on Pilot Programs of Issuance of Shares or Depositary Receipts by Innovative Enterprises in China (the "Pilot Plan")*, which provides systematic supports to qualified innovative entities to sell stocks or issue Chinese Depositary Receipts (or CDR) on China's A-share market.

According to the Pilot Plan, qualification requirements for enterprises to sell stock or issue CDRs in China will include, among others, that they are engaged in such high-tech or new strategic industries as internet, big data, cloud computing, artificial intelligence, software and integrated circuit, high-end equipment manufacturing and bio-technology which is consistent with China's national strategy, possess core technology and are highly recognized by the market. In addition, for overseas-listed large "red-chip" enterprises, their market capitalization should be higher than RMB200 billion, while for unlisted innovative firms (whether incorporated onshore or offshore), they should have a valuation of over RMB20 billion and annual revenue of over RMB3 billion, or otherwise have rapid revenue growth and hold competitive self-developed advanced technology. Currently there are about 10 overseas-traded Chinese companies that had met the afore-mentioned valuation requirement. The scope of unlisted but qualified companies is hard to identify at this point. CSRC is yet to further specify detailed requirements for the Pilot Plan according to reports.

Under the Pilot Plan, qualified offshore "red-chip" enterprises may list in China by issuing CDR or selling shares, while qualified enterprises incorporated in China may apply for IPO. For CDR issuance, the "red-chip" enterprises are required to fully disclose the voting mechanism, VIE structure and any other special arrangement wherever applicable. For share issuance and listing, if the "red-chip" enterprise involves any VIE arrangement, CSRC will review and make decision more cautiously. The Pilot Plan lays out a fundamental framework for issuance of CDRs, outlining information disclosure requirements, investor protection and legal liabilities, among others.

In addition to getting listed overseas, qualified "red-chip" enterprises may also choose to come back to China's A-share market and get listed domestically through public share offering or the issuance of CDRs while maintaining their existing corporate structure or even VIE arrangements according to the Pilot Plan, which seems to be major piece of good news for shareholders and investors, but it is too early to say if this experiment will become a prevailing practice.

Further, the Pilot Plan mentioned that the share issuance and listing of "red-chip" enterprises involving VIE structures will be reviewed by CSRC in a cautious manner (for CDR issuance, CSRC's review and examination will be mainly focused on information disclosures upon the applicable IPO). It is widely expected that CSRC's opinions will more clearly reflect Chinese government's attitude towards VIE arrangements that have been quite commonly adopted for a long while by the market for foreign restricted investment areas but never officially endorsed.

According to reports, CSRC is to promulgate implementing rules and regulation requirements to deploy and implement the Pilot Plan. We will closely monitor further developments in this area.

PE&VC / 私募股权及创业投资

CSRC Issued New Policy to Facilitate Exit by VC Shareholders from Listed Companies 证监会发布 差异化减持政策支持上市公司创业投资基金股东的退出

证监会于2018年3月2日发布《上市公司创业投资基金股东减持股份的特别规定》（“《特别规定》”），确立了创业投资基金所投资企业上市解禁期与上市前投资期限长短反向挂钩的制度安排，旨在鼓励创业投资基金进行长期投资、价值投资。《特别规定》自2018年6月2日起施行。

《特别规定》仅适用于在中国基金业协会已备案的创业投资基金（需符合对外投资金额中对早期中小企业和高新技术企业的合计投资金额应占比50%以上等要求）。当符合《特别规定》要求的创业投资基金投资的早期中小企业或高新技术企业上市后，若该创业投资基金的投资期已满3年，则其可以在锁定期结束后较快地实现减持，即从原来规定的3个月内减持股份的总数不超过相关减持比例限制（通过集中竞价交易方式减持的，比例限制为公司股份总数的1%；通过大宗交易方式减持的，比例限制为2%）变为2个月（投资期满4年的话则为1个月）内减持股份的总数不得超过比例限制。考虑到大多数创业投资基金在被投资公司首次公开发行上市后的持股比例一般都较低，《特别规定》对创业投资基金的利好相对有限。

另外，《特别规定》明确了其未规定的上市公司股东减持股份事项仍继续适用《上市公司股东、董监高减持股份的若干规定》（“《减持规定》”），也即创业投资基金股份减持方面的其他要求，如信息披露、违法责任等方面，仍需适用《减持规定》及其他有关规定。

The China Securities Regulatory Commission (or CSRC) issued the *Special Provisions on Reduction of Shares Held by Venture Capital Shareholders in Listed Companies* (the “Special Provisions”) on March 2, 2018, with an aim to encourage venture capital (or VC) funds to make long-term value investments. The Special Provisions will become effective on June 2, 2018, pursuant to which the IPO lock-up period for VC investors will be linked to the length of their investments in the underlying listed companies.

The Special Provisions apply to qualified VC funds only, which include, among others, that the fund has been registered with Asset Management Association of China (or AMAC) and the investment made by the fund in early-stage small and medium sized enterprises (or SMEs) and high-tech companies is more than 50% of its total invested amount. For a qualified VC fund, if its investment in an early stage SME or high-tech company has been more than 3 years when the investee company is listed, the VC fund will be allowed to sell its stock faster than previously upon expiry of the applicable lock-up periods. Specifically, with respect to the limit on stock reduction, it was required that within 3 months after an IPO, no more than 1% of the listing company shares should be sold by a VC investor through call auction (or 2% if through block trade). Now according to the Special Provisions, the 3-month time limit is shortened to 2 months (or 1 month if the VC fund's investment in the underlying company lasts for more than 4 years). In practice, however, considering most VC funds do not hold big stakes in investee companies, the aforementioned adjustment may offer only limited incentive to VC investors.

In addition, it is specified that areas not covered by the Special Provisions shall still follow the requirements of the *Various Rules on Reduction of Shares by Shareholders, Directors, Supervisors and Senior Officers of Listed Companies* in terms of information disclosure and legal liabilities, among others.

OUTBOUND INVESTMENTS / 境外投资

NDRC Further Specifies Approval and Filing Requirements for Outbound Investments 国家发改委 细化境外投资核准、备案要求

近日，国家发改委发布《境外投资敏感行业目录》（2018年版）（“《目录》”）以及《企业境外投资管理办法》（“《办法》”）的配套格式文本（“《格式文本》”），进一步明确了境外投资的核准范围以及核准、备案、情况报告的操作要求。《办法》、《目录》和《格式文本》均于2018年3月1日起实施。

(i) 《目录》。除《办法》中规定的新闻传媒等三个行业外，明确将2017年8月18日《国务院办公厅转发国家发展改革委商务部人民银行外交部关于进一步引导和规范境外投资方向指导意见的通知》列举的需由境外投资主管部门核准的项目（即房地产、酒店、影城、娱乐业、体育俱乐部，以及在境外设立无具体实业项目的股权投资基金或投资平台，具体分析请参见我

The National Development and Reform Commission (or NDRC) recently issued the *Catalog of Sensitive Sectors for Outbound Investment (2018 Edition)* (the “Catalog”) and the *Accompanying Templates (the “Templates”) for the Administrative Measures on Outbound Investment of Enterprises* (the “Measures”), further clarifying the scope of approval over outbound investments and the implementing requirements of approval, filing and reporting in connection with outbound investments. The Measures, the Catalog and the Templates have become effective on March 1, 2018.

(i) The Catalog. In addition to the three sensitive sectors including news media as specified under the Measures, such industries as real estate, hotels, movie theaters, entertainment, sports clubs and equity investment funds or investment platforms established in foreign countries or regions not for specific industrial projects that are subject to outbound investment approval under the *Notice on Forwarding the Guiding Opinions of the National Development and Reform Commission, the Ministry of Commerce, the People's Bank of China and the Ministry of*

所《每月立法动态》2017年9月刊) 纳入到《目录》中。

- (ii) 《格式文本》明确了境外投资的核准、备案、情况报告的具体要求, 较《办法》发布前的要求更为细致, 其中值得注意的是:
- (a) 追溯投资主体的最终实际控制人。投资主体应逐层穿透披露至其最终实际控制人(最终实际控制人包括单一实际控制人, 也包括共同实际控制人, 一般应为自然人或国有控股实体)。特别地, 投资主体为合伙企业, 应披露所有普通合伙人和出资比例前五大的有限合伙人; 普通合伙人为公司的, 向上追溯至最终实际控制人; 普通合伙人为合伙企业的, 进一步向上追溯其普通合伙人直至最终实际控制人。此外, 通过协议、信托或其他方式实现控制的, 应标明控制方和控制方式, 如有代持情况的应同时披露。
- (b) 监管相关境外企业投资。投资主体仅通过其控制的境外企业开展大额非敏感类项目的(投资主体不直接投入资产、权益, 也不提供融资、担保), 应报告相应的投资信息; 同时涉及投资主体直接投资的, 应当履行有关核准(敏感类)或备案(非敏感类)手续。
- (c) 完整披露投资资金来源与流向。投资主体应提供证明投资资金来源真实合规的支持性文件; 除投资直接目的地、最终目的地外, 投资主体还应披露与投资项目有关的其他国家和地区(如中间层公司所在地)。
- (d) 需分析投资项目对我国国家利益和国家安全的影响、项目主要风险并提出防范和应对措施。

《目录》和《办法》的发布意味着新的境外投资监管标准已经基本明确。尽管《办法》简化了相关程序, 减轻了企业境外投资的行政负担, 但《格式文本》要求披露的信息更为精细和广泛, 也充分体现了国家严控资本外流的态度。

Commerce, the People's Bank of China and the Ministry of Foreign Affairs on Further Guiding and Regulating the Directions of Outbound Investments (please see our September 2017 issue of China Regulatory Updates for details) are governed by the Catalog as well.

- (ii) The Templates. The Templates specified more extensive requirements on the approval, filing and reporting of outbound investments. Set below are a few highlights for your general reference:
- (a) Ultimate shareholding structure will be looked through. Investors are required to disclose the shareholding details, including the ultimate controlling party or parties. In most cases, such an ultimate controlling party should be a natural person or a state-owned Chinese entity. Specifically, where an investor is a partnership, it should disclose its general partner (including the ultimate controlling party) and top 5 limited partners by capital contributions. In addition, if any control is realized through agreement, trust, nominal shareholder or otherwise, details of such arrangements should also be reported to NDRC.
- (b) Investments by offshore vehicles are subject to supervision. For investments over USD300 million in non-sensitive sectors of offshore vehicles that are controlled by onshore Chinese entity where the investments do not involve injection of assets or equity, or provision of financing or guarantee by the Chinese entity, the relevant investment information should be reported to NDRC. When any overseas investment also involves onshore Chinese entity, depending on whether it is in sensitive or non-sensitive industry, applicable approval or filing procedure should be followed.
- (c) Full disclosure of source of funds and investment activities are required. For any offshore investment, the onshore Chinese entity is required to provide documents demonstrating the authenticity and legality of the source of funds. In addition, disclosures are required to include the direct, intermediate and ultimate destination countries and regions if an investment involves multilayer offshore investment vehicles.
- (d) Risk evaluation is part of information disclosure. Analyses of impact on Chinese national security and interests as well as potential major risks and prevention measures of a proposed outbound investment are also required to submit to NDRC according to the new regulation requirements.

The Catalog and the Measures established a new regulatory framework for outbound investments which on one hand further streamlined administrative procedures in favor of overseas investments, while on the other hand raising extensive and more specific disclosure requirements, indicating Chinese government's determination to strictly control capital outflows.

FOREIGN INVESTMENTS / 外商投资

PBOC Removed Restrictions on Foreign Investments in Payment Settlement 央行放开外商投资支付机构准入限制

中国人民银行于2018年3月19日发布《中国人民银行公告(2018)第7号》(“《公告》”), 明确了外商投资支付机构准入和监管政策。自此, 《非金融机构支付服务管理办法》(“《支付办法》”)与《公告》共同构成了内资、外资支付机构的监管体系, 对

The People's Bank of China or PBOC issued the *Announcement No. 7* on March 19, 2018 (the “Announcement”), which specified the entry requirements and regulatory policies for foreign-investments in payment settlement institutions. Together with the *Administrative Measures on Payment Services of Non-Financial Organizations* (the “Payment Measures”), the

内资和外资实行统一的准入标准和监管要求。

根据《公告》，境外机构拟为境内主体的境内外交易提供电子支付服务的，应当在境内设立外商投资企业，并根据《支付办法》取得支付业务许可证（“支付牌照”）。《公告》要求外资支付机构应拥有完备的业务系统和灾备系统，且其在境内收集和产生的个人信息和金融信息的存储、处理和分析应在境内进行。此外，申请支付牌照的外商投资企业需满足实缴资本最低限额1亿元人民币（拟在省、自治区、直辖市范围内从事支付业务的，最低限额为3000万元人民币），主要出资人连续为金融机构提供信息处理支持服务2年以上（或连续为电子商务活动提供信息处理支持服务2年以上），连续盈利2年以上等条件。

在国内支付市场几乎已被支付宝和微信垄断的情形下，外资支付机构的发展仍有待市场的检验。另一方面，考虑到央行此前曾明确表示其在“一段时期内原则上不再批设新支付机构”，本次《公告》的发布是否意味着央行会在实践层面放开支付牌照的限制还尚待观察。

Announcement established a regulatory regime governing domestic and foreign payment settlement institutions which will perform unified requirements on market entry and supervision.

According to the Announcement, if any overseas institution intends to provide electronic payment settlement services to onshore Chinese entities for domestic and foreign transactions, it shall establish a foreign-invested enterprise (or FIE) in China and obtain a *Third-Party Payment License* in accordance with the Payment Measures. The overseas institution itself should already have an integrated payment settlement system and a disaster recovery system. In addition, for any information, personal and financial, that is collected and generated in China, the storage, processing and analysis of which should also be conducted onshore in China. Further, among other requirements, to obtain a *Third-Party Payment License*, the paid-in registered capital of the onshore FIE must exceed RMB100 million (or RMB30 million if the payment settlement services of the FIE will only be provided in the territory of a province, an autonomous region or a municipality under Beijing central government's direct administration), while the major capital sponsor of the FIE should have been providing information processing support services to financial institutions or e-commerce businesses and have been making profits for more than 2 years consecutively.

Currently, the third-party payment service in China is almost dominated by *Alipay* and *WeChat Pay*, two major payment settlement tools developed by Chinese web giants Alibaba and Tencent, respectively. In addition, PBOC had declared previously that within certain period of time, it generally would not issue new license to any third-party payment settlement business. Therefore, whether the Announcement could be interpreted as a turning point for foreign investments in payment settlement area remains to be seen.

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