

May & June 2020

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CAPITAL MARKET / 资本市场

GEM Board Starts to Implement Registration System 创业板正式启动注册制改革

2020年4月27日，中央全面深化改革委员会第十三次会议审议通过了《创业板改革并试点注册制总体实施方案》，中国证券监督管理委员会（“证监会”）随后颁布《创业板首次公开发行股票注册管理办法（试行）》等4部文件的征求意见稿，深圳证券交易所（“深交所”）同时颁布《深圳证券交易所创业板股票发行上市审核规则》等8部配套业务规则的征求意见稿或修订文件（以上所有文件，合称“改革文件”）。改革文件的颁布，标志着继科创板这一新增板块试点注册制后，酝酿已久的存量板块注册制改革将从创业板开始启动。

虽然绝大多数改革文件尚未正式生效，但总体上而言，从上述文件中已经可以发现创业板注册制改革的方向和重点：

1. 总体上沿袭和借鉴了科创板注册制的经验，同时保持板块特色。在包括发行条件、审核注册程序、发行承销、信息披露、监管处罚等核心制度的设计上，创业板与科创板基本上保持一致，并结合科创板注册制的运行经验及创业板的市場基础，进行了适当的调整和优化。此外，鉴于创业板与科创板在服务创新企业的定位上可能有一定重合，改革文件将创业板的定位进一步明确为“主要服务成长型创新创业企业，支持传统产业与新技术、新产业、新业态、新模式深度融合”，以与主要服务科技创新企业、强调“科创属性”的科创板形成差异化定位。
2. 允许满足条件的特殊企业在创业板上市，但具体要求与科创板存在差异。与科创板类似，创业板采用了多元化的上市市值和/或财务指标要求，并允许满足一定条件的特殊企业（包括红筹企业、存在表决权差异安排的企业和尚未盈利的企业）在创业板上市。但红筹企业和存在表决权差异安排的企业在创业板上市的要求相较于科创板更为严格，其最近一年应为盈利（科创板无此项要求）。对于尚未盈利的企业，虽然改革文件中的相关规定为其在创业板上市预留了制度空间，但根据深交所新闻发言人的解答，未盈利企业的上市在一年内暂不实施，一年后再做评估。
3. 其他基础制度改革。改革文件以发行制度改革为核心，与此相关，交易、退市、监管等各项基础制度都进行了一些调整。例如，在交易制度方面，创业板与科创板的规则大体上一致，对于首发企业在上市前五日不设涨跌幅，此后的涨跌幅限制从目前规定的10%调整为20%；在投资者适当性管理方面，根据风险匹配原则对创业板的存量投资者和新增投资者作出了不同的安排；在信息披露方面，基于注册制以信

On April 27, 2020, the 13th meeting of the Central Commission of Comprehensively Deepening Reform deliberated and approved the *Overall Implementation Plan for the Growth Enterprise Market (“GEM”) Reform and Launch of the Pilot Registration System*. CSRC subsequently circulated four draft documents (including the *Trial Administrative Measures for the Registration of Initial Public Offerings on GEM*, among others), while the Shenzhen Stock Exchange (“SZSE”) also publicized several draft or revised implementing rules (including the *Stock Listing Rules on GEM of SZSE*, among others; for easy reference, together with all above documents, collectively, the “Reform Documents”). The promulgation of the Reform Documents have signaled that after the pilot registration system reform is adopted by the Science and Technology Innovation Board (also known as the STAR Market), the long-awaited overall reform for the existing Chinese stock markets will start with the GEM board.

Although most of the Reform Documents have not yet come into force, we found a few points as highlighted below are quite noteworthy:

1. GEM reform is based on the STAR Market experience and also carries its own features. With respect to such core requirements as the stock offering conditions, registration procedures, issuance and underwriting, information disclosure, administration and penalties, the GEM reform generally stays consistent with the STAR Market practice but with necessary adjustments and improvements. To better differentiate itself from the STAR Market when serving innovative enterprises, GEM is further positioned by the Reform Documents as a place to primarily serve innovative and venture companies with growth potentials, supporting deepening integration of traditional industries and new technologies, new industries and new business models, while the STAR Market will continue to focus on science and technology innovations.
2. Companies with special conditions are allowed to list on GEM, under circumstances somewhat different from those of STAR Market. Similar to the STAR Market, GEM also adopts diversified listing requirements based on the candidate’s market value and other financial indicators, allowing certain special types of eligible entities including red chip enterprises, companies with dual voting structure, and companies not yet profitable to get listed on GEM. It is noteworthy though that red chip enterprises and companies with dual voting structure will qualify for listing on GEM only if they are profitable in the latest year, which is not required by the STAR Market. For companies not yet profitable, although the Reform Documents allow them to list on GEM, there is no plan to implement this point in a year or so according to the spokesperson for SZSE, leaving this provision for further evaluation later on.
3. Alterations to corresponding systems. To support the new registration system, the Reform Documents also provide adjustments to rules on trading, delisting and regulations, among others. For examples, in terms of trading, GEM will remove limits on price range for the first five days upon IPO and allow up to 20% change in stock prices thereafter. In terms of investor eligibilities, the existing investors and new investors will be treated separately based on different risk management requirements. To emphasize the importance of information disclosure under the registration system, the requirements are tightened up and the penalties are increased. To improve qualities of GEM listings, the

息披露为中心的原则，完善了创业板信息披露要求、提高对虚假信息披露的惩罚力度；在退市制度方面，针对当前的退市规则进行了改革完善，以优化创业板上市公司质量。

同时，为确保核准制向注册制平稳过渡，证监会对创业板改革文件颁布到正式生效之间的过渡期作出了明确的安排：2020年4月27日起，(i)证监会停止接收在创业板IPO的申请，但再融资和并购重组的申请暂不受影响；(ii)已通过发审委审核尚未取得核准批文的企业，可在改革文件正式发布前按现行规定启动发行承销工作，也可选择申请停止推进行政程序，在改革文件正式发布后向深交所申请按照改革后的规则发行承销；以及(iii)改革文件正式发布后10个工作日内，深交所仅受理创业板在审企业的IPO、再融资、并购重组申请，在此之后才开始受理其他企业的上述申请。

创业板注册制改革落实了新《证券法》的要求，是在科创板实践经验基础上的进一步探索，将为主板等其他存量板块推广注册制积累经验。参考科创板注册制的推行时间表，预期创业板注册制有望于年内正式落地实施。我们会对资本市场注册制改革的全面推进保持密切关注。

CSRC Further Clarifies Rules for Onshore Listing of Red Chip Companies 证监会进一步明确红筹企业境内上市规则

继创业板注册制改革文件提出允许符合条件的红筹企业在创业板上市后，证监会于2020年4月30日发布了《关于创新试点红筹企业在境内上市相关安排的公告》（“《公告》”），为在境内主板、中小板、创业板和科创板上市的创新试点红筹企业提供路径。在《公告》发布之前，红筹企业境内上市规则主要体现为证监会《关于开展创新企业境内发行股票或存托凭证试点的若干意见》等存托凭证业务规则，以及科创板和创业板业务规则中的相关内容（“原红筹上市规则”）。

《公告》主要从以下几个方面进一步明确了红筹企业境内上市规则：(i)增加境内上市时的可选标准。根据原红筹上市规则，已在境外上市的红筹企业在境内上市的标准仅限于市值不低于2,000亿元人民币，《公告》在此基础上增加了“市值200亿元人民币以上，且拥有自主研发、国际领先技术，科技创新能力较强，同行业竞争中处于相对优势地位”的标准；(ii)规定了协议控制（VIE）架构的处理问题。对于存在VIE架构的红筹企业申请发行股票，《公告》明确了证监会将在受理相关申请后征求红筹企业境内实体实际从事业务的国务院行业主管部门和国家发展改革委、商务部意见，依法依规处理；以及(iii)为尚未在境外上市的红筹企业存量老股减持预留空间。对于红筹企业在境内上市前发行的股份是否可以在A股实现减持，《公告》规定红筹企业“应在申报前就存量股份减持等涉及用汇的事项形成方案，报中国证监会，由中国证监会征求相关主管部门意见”。

我们理解，《公告》对于该减持问题以及上述VIE架构问题均是原则性规定了处理方式，具体的审核/处理

delisting system is amended as well.

To ensure a smooth transition, CSRC announced work arrangements for the transitional period: (i) Starting April 27, 2020, CSRC would stop accepting new applications for IPO on GEM, although applications for refinancing or merger and reorganizations would not be affected; (ii) IPO candidates which have passed the examination of the Issuance Examination Committee but have not obtained CSRC approval may proceed with IPO by observing the current rules, or choose to postpone IPO, wait and apply to SZSE instead after the Reform Documents become effective; and (iii) within 10 working days after the Reform Documents take effect, SZSE will only review cases previously submitted to CSRC. New applications will be accepted thereafter.

The GEM reform comes as a further exploration following the STAR Market practice under the new Securities Law, in an effort to accumulate more experiences in preparation of broader registration system reforms for the Main Board and other existing stock markets. In light of the STAR Market reform schedule, it is expected that the GEM reform could officially be implemented within this year. We will closely monitor the developments in this area.

Following the GEM registration system reform that would allow eligible red chip enterprises to be listed on GEM, CSRC issued the *Announcement on Relevant Arrangements for Listing of Innovative Pilot Red Chip Enterprises on Domestic Stock Markets* (the “Announcement”), providing potential opportunities for innovative pilot red chip enterprises to get listed on the Main Board, the Small and Medium Enterprise Board, the GEM board and the STAR Market. Before the Announcement, the listing of red chip enterprises on domestic stock exchanges were mainly regulated by the *Pilot Programs of Issuance of Shares and Depository Receipts by Innovative Enterprises in China* and other CDR rules issued by CSRC, as well as relevant provisions under the implementing rules of GEM and the STAR Market (collectively, the “Original Red Chip Listing Rules”).

The Announcement further clarified the listing rules of red chip enterprises in domestic stock markets from the following aspects: (i) Added a listing condition - According to the Original Red Chip Listing Rules, red chip enterprises that are listed overseas may list domestically if they have a market value of no less than RMB200 billion. As an exception to this requirement, the Announcement added one more condition under which a red chip enterprise may also list in mainland China if it has a market value of more than RMB20 billion and has independent and internationally leading technologies, strong scientific and technological innovation abilities and competitive industry advantages; (ii) Listing with variable interest entity (or VIE) structure is addressed - For applications by red chip enterprises with VIE structures, the Announcement specified that CSRC will seek opinions from the competent department in charge under the State Council, the National Development and Reform Commission and the Ministry of Commerce and handle the case in accordance with applicable laws and regulations; and (iii) Reduction of pre-IPO shares by red chip enterprises not listed overseas is also considered - According to the Announcement, red chip enterprises should submit a plan to CSRC on the proposed reduction of its pre-IPO shares and use of foreign exchanges, and CSRC will consult with competent government authorities on how to specifically deal with the proposed

要求及流程仍有待后续规则及审核实践予以明确，我们将对此保持持续关注。

reduction.

The Announcement has only outlined the basic principles to deal with VIE structures and reduction of pre-IPO shares. We expect that these sensitive issues will be further regulated and clarified by the implementing rules and the government practice later on.

CROSS-BORDER INVESTMENTS / 跨境投资

China Removes Quota Restrictions for QFII and RQFII Programs 合格境外投资者境内投资额度正式取消

2020年5月7日，中国人民银行、国家外汇管理局发布《境外机构投资者境内证券期货投资资金管理规定》（“《规定》”），自2020年6月6日起实施。《规定》落实了2019年9月国家外汇管理局宣布取消合格境外机构投资者（QFII）和人民币合格境外机构投资者（RQFII）（合称“合格境外投资者”）额度的要求，并进一步放松与简化了合格境外投资者境内投资资金的管理，主要包括：(i) 明确将合格投资者的额度管理变更为本外币一体化的登记管理，合并QFII与RQFII机制。合格境外投资者可在向外汇管理局办理业务登记后，自主选择汇入资金的币种和时机以开展境内证券期货投资；(ii) 简化了投资收益汇出手续。在汇出累计收益时，合格境外投资者仅需出具完税承诺函，取消了出具投资专项审计报告、税务备案表等要求；以及 (iii) 《规定》还在取消托管人的数量限制（但应当指定一家托管人作为主报告人）、完善合格境外投资者外汇风险及投资风险要求等方面进行了规定。作为金融市场进一步开放的一个步骤，《规定》有利于吸引更多的外国投资者参与中国资本市场。

On May 7, 2020, the People's Bank of China and the State Administration of Foreign Exchange (“SAFE”) jointly released the *Provisions on the Administration of Domestic Securities and Futures Investment Funds of Foreign Institutional Investors* (the “Provisions”), which will take effect on June 6, 2020. The Provisions reaffirmed the SAFE’s decision to remove quota limits on Qualified Foreign Institutional Investor (“QFII”) and RMB Qualified Foreign Institutional Investor (“RQFII”; together with QFII, collectively, the “Qualified Foreign Investors”), and further relaxed and simplified the procedures for the administration of the Qualified Foreign Investors’ inbound investments. Highlights from the Provisions include, among others: (i) replacing quota limits and consolidating QFII and RQFII investment channels into a unified registration administration without differentiating RMB from foreign currencies. All Qualified Foreign Investors, following successful registrations with SAFE, will be allowed to choose currency types and timing of funding for inbound investments on their own; (ii) simplifying procedures for repatriation of investment proceeds. Qualified Foreign Investors will only be required to submit a letter of undertaking on tax compliance, without the need to submit any special audit report or tax recordation forms; and (iii) removing limits on number of custodian banks (*however, where there are two or more custodians, a reporting principal should be selected from the custodians*) and improving risk management associated with foreign exchange and investment activities by the Qualified Foreign Investors.

The Provisions represent a step of China’s effort to further open up its financial services market and will help attract more foreign investors to participate in China’s capital market.

China Adopts Pilot Policies on QFLP, QDLP and QDIE for Greater Bay Area 粤港澳大湾区QFLP、QDLP、QDIE试点政策出台

2020年5月14日，中国人民银行、银保监会、证监会、外汇局发布《关于金融支持粤港澳大湾区建设的意见》（“《意见》”），提出涵盖五个方面的共26条措施，以进一步推进粤港澳大湾区（“大湾区”）的金融开放与创新。值得注意的是，《意见》明确规定开展私募股权投资基金跨境投资试点，允许港澳机构投资者通过合格境外有限合伙人（QFLP）参与投资大湾区内地私募股权投资基金和创业投资企业（基金），并有序推进合格境内有限合伙人（QDLP）和合格境内投资企业（QDIE）试点，支持内地私募股权投资基金境外投资。

QFLP、QDLP、QDIE的试点此前已在上海、深圳等少数几个城市开展，但各地在试点企业条件、投资范围、审批机关/程序等具体规则和实践方面均存在一定差异。一般来说，QFLP作为境内投资渠道之一，允许境外机构投资者在经主管政府部门特别批准后参与

On May 14, 2020, in an effort to facilitate further opening-ups and innovations of the Guangdong-Hong Kong-Macau Greater Bay Area’s finance sector, the People’s Bank of China, together with three other relevant authorities jointly released the *Opinions Concerning Financial Support for the Development of the Greater Bay Area* (the “Opinions”), comprising a total of 26 measures that covers some five areas. It is noteworthy that the Opinions introduces pilot programs for cross-border PE investments, allowing Hong Kong and Macau-based institutional investors to invest in PE/VC funds incorporated in the Greater Bay Area through QFLP. It also promotes pilot programs of QDLP and QDIE step by step, and encourages overseas investments by domestic PE funds.

While the pilot schemes of QFLP, QDLP and QDIE have been previously adopted in a few cities including Shanghai and Shenzhen, specific rules and practice such as qualification requirements, scope of investments as well as authorities and procedures for approvals varied from city to city. In general, QFLP allows foreign investments in domestic PE/VC markets through foreign-invested equity investment enterprises upon approvals from the competent government authority. QDLP and

设立外商投资股权投资企业，将境外资金投资于境内PE和VC市场。QDLP和QDIE试点较为类似，均为ODI之外的境外投资渠道，大致为经主管政府部门特别批准，允许符合条件的投资管理机构向境内投资者募集人民币资金，并将所募集的人民币基金投资于特定的海外市场。目前《意见》中并未明确大湾区试点QFLP、QDLP/QDIE业务的具体规则，因此大湾区的试点规则是否与其他试点城市存在实质差异，以及未来是否能实现试点的常态化，仍有待进一步观察。

QDIE, as two outbound investment channels other than ODI, allow qualified investment institutions to raise RMB funds from domestic investors and invest in designated overseas markets after obtaining required approvals. Since the Opinions have not provided implementation details for these QFLP, QDLP and QDIE pilot schemes, it remains to be seen whether and to what extent they will be different from other pilot cities' programs.

CIVIL LAW / 民法

China Enters Era of Civil Code 民法典正式通过，中国民法典时代到来

2020年5月28日，第十三届全国人民代表大会第三次会议表决通过了《中华人民共和国民法典》（“《民法典》”），宣告了中国“民法典时代”的到来。《民法典》将自2021年1月1日起施行，现行的众多民事单行法律如《民法通则》、《民法总则》、《物权法》、《婚姻法》、《合同法》等将同时废止。

On May 28, 2020, the Third Session of the 13th National People's Congress adopted the *Civil Code of the People's Republic of China* (the "Civil Code"), proclaiming the advent of China's "Era of Civil Code". The Civil Code will come into force on January 1, 2021. As a result, various civil laws and regulations currently in effect including *the General Principles of the Civil Law, the General Rules of the Civil Law, the Real Property Law, the Marriage Law and the Contract Law* will be repealed.

从体例上来看，《民法典》共分为七编，包括总则编、物权编、合同编、人格权编、婚姻家庭编、继承编、侵权责任编，以及附则。除人格权编和附则外，其他各编分别与现行民事单行法律相对应。从内容上来看，《民法典》并未脱离现行民事法律法规的核心框架，大量沿用各单行法律的现行规定，并结合社会发展新情况、新态势进行了一定的补充、修订与完善：例如将人格权独立成编、在物权编中新增“居住权”制度、设置了离婚冷静期等新制度；完善了格式条款、网络侵权、遗嘱继承等现行法律制度；加强了对个人信息和隐私、房屋业主权利等权利的保护；明确禁止高利贷、性骚扰、高空抛物等备受关注的违法行为及落实责任主体等。作为民事主体开展民事活动的基础性法律，《民法典》在最大限度上保证了现行法律的稳定性和规则适用上的连贯性，并同时回应了社会发展所提出的新问题。随着《民法典》的颁布，除现行民事单行法律将废止外，与之相关的法律、法规及相关司法解释可能也需要逐步清理与完善，以保证法律适用的统一。

The Civil Code consists of seven chapters, namely, the chapters of general rules, real property, contracts, personality rights, marriage and family, inheritance, tort liability, and supplementary provisions. Except for the personality rights and supplementary provisions, each chapter corresponds to one applicable civil law. In terms of the contents, the Civil Code, to a great extent, consolidates the existing civil regulations with supplements, amendments and improvements based on societal developments. For examples, the Civil Code adds an entire chapter of personality rights. It also introduces residential rights and cooling-off periods in divorce cases. In addition, the Civil Code improves regulations on form contracts, network infringements, testamentary succession and etc., strengthens protection of rights related to personal information, privacy and proprietorship and specifically prohibits such illegal behaviors as usury, sexual harassment, throwing at the upper air.

The Civil Code, being the cornerstone law to govern civil and commercial activities, maintains the stability of the law and the consistency of the law enforcement, which also reflects developments in modern Chinese societies. Following the enactment of the Civil Code, clarifications on integrating with existing civil laws, regulations and judicial interpretations are anticipated for a smooth transition.

INTELLECTUAL PROPERTY / 知识产权

Draft Amendments to Copyright Law Issued for Public Comments 著作权法修正案草案征求意见

2020年4月30日，《著作权法（修正案草案）》（“《修正案草案》”）在中国人大网公布，向社会公开征求意见。《著作权法》的上一次修订已是2010年，随着作品创作和传播技术、环境在这十年间的显著变化，新的作品类型涌现，同时著作权侵权案件频发，一些现有规定已经无法适应实践的需要。《修正案草案》主要通过以下几方面的修订回应了社会需求：

On April 30, 2020, the *Draft Amendments to the Copyright Law of the People's Republic of China* (the "Draft Amendments") was released by the National People's Congress for public comments. The amendments aim to address major developments in the copyright field since last overhaul to the law in 2010. Highlights from the Draft Amendments include, among others:

1. Clear definition of Works. The current Copyright Law lists several types of Works but does not give any definition of Works. The Draft Amendments propose to borrow the

1. **明确作品认定标准。**首先，现行《著作权法》仅列举了作品类型，并未明确规定作品的含义，《修正案草案》吸收了《著作权法实施条例》中对于作品的定义（即“文学、艺术和科学领域内具有独创性并能以某种有形形式复制的智力成果”），在法律和行政法规之间保持了定义的一致性；此外，《修正案草案》还修改完善了相关作品类型的表述（例如以“视听作品”替代“电影作品和以类似摄制电影的方法创作的作品”），以解决短视频、网络直播等新业态作品在现有规定下难以归类的问题。
2. **加大侵权行为处罚力度。**《修正案草案》在多个维度显著提高了对于著作权侵权行为的处罚力度，主要包括：引入惩罚性赔偿制度，对于侵权行为情节严重的，可以适用按照实际损失、侵权人违法所得或者权利许可使用费的倍数计算方法确定的赔偿数额一倍以上五倍以下的惩罚性赔偿；以及大幅提高侵权法定赔偿额上限（从人民币50万元提高到500万元）。上述措施有利于解决实践中著作权维权成本高、侵权赔偿数额低的问题。

除上述两项修订外，《修正案草案》还在合作作品的使用规则、作品登记制度、著作权合理使用制度、衔接其他民事法律规则等方面进行了完善、修改和补充。《著作权法》修订是我国知识产权制度重要的完善举措，我们将持续关注相关的立法修改动向。

definition of Works set forth under the *Implementing Regulations of the Copyright Law* which refers to intellectual products with originality in the fields of literature, arts and science that are reproducible in tangible forms. The Draft Amendments also attempt to improve descriptions of certain types of Works, e.g., replacing the type of audiovisual works with cinematographic works and works created through a process similar to cinematography to incorporate the emerging new types of intellectual products such as short video clips and live video streaming which cannot be easily categorized under current copyright laws and regulations.

2. **Increased penalties on IP right infringements.** To crack down on copyright infringements, the Draft Amendments propose to raise penalties, imposing punitive damages on malicious cases where the infringing party could be held responsible for fines of up to 5 times the amount of actual losses, illegal profits or royalties. Further, it plans to increase the damage compensation cap from RMB500,000 to RMB5 million.

In addition to the above two points, the Draft Amendments also include provisions to improve the use of Works with joint authorship, the registration of IP rights, the reasonable use of copyrights, as well as the integration of the Copyright Law with other civil laws and regulations.

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