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CAPITAL MARKET / 资本市场

Ten Government Departments Issued Guiding Opinions on Internet Finance 十部委出台互联网金融指导意见

The People's Bank of China and other nine PRC government departments and ministries recently issued the *Guiding Opinions on Promoting the Healthy Development of Internet Finance* (the "Opinions"). The Opinions specified the concepts and scopes of equity crowdfunding, Internet sales of fund products, Internet insurance, Internet trust, Internet consumer finance and other major forms of Internet finance businesses, and clarified the division of the regulatory responsibilities among government agencies.

The Opinions defined equity crowdfunding as activities of raising small amounts of equity financing publicly through Internet, which is different from the "non-public" requirement on private equity crowdfunding under the *Draft Administrative Measures for Private Equity Crowdfunding*. This means that crowdfunding platforms are allowed to advertise and disclose information to public and the number of investors will not be limited by the 200 shareholders restriction. The Opinions also required that investors should only make small amount investments, but did not set up a specific limit for investment amount. On the other hand, the Opinions clarified that online individual lending

(i.e., online P2P lending) institutions should serve as intermediaries of information and thus will not be allowed to provide credit enhancement services. Also, the lending through online individual lending platforms is regarded as private lending, which means that no financial license is required but restrictions on private lending, such as "no interest rate shall exceed four times the benchmark lending rate", must be followed. In addition, the Opinions required the institutions and individuals who intend to establish websites for operating Internet finance businesses to complete filing procedures with telecom authorities. While the nature of the filing is not yet clarified, it is possible that the current regulation practice via ICP filing will continue to be adopted.

As a guideline issued against a background of rapid development of Internet finance, the Opinions clarified the regulatory responsibilities of various government agencies and marked the start-point for regulating this rising industry. We will further follow up with subsequent detailed rules to be enacted in the future.

近日，央行等十部委发布《关于促进互联网金融健康发展的指导意见》

（“《意见》”）。《意见》确立了股权众筹融资、互联网基金销售、互联网保险、互联网信托和互联网消费金融等互联网金融主要业态的性质和边界以及监管职责分工。

其中，《意见》将股权众筹融资定义为通过互联网形式进行公开小额股权融资的活动。与之前的《私募股权众筹融资管理办法（试行）（征求意见稿）》非公开发行的要求不同，“公开”即允许股权众筹平台公开宣传与披露信息且投资者人数不受200人的限制；同时《意见》要求投资必须为小额投资，但并未具体限定投资额度。另一方面，《意见》将个体网络借贷（即P2P网络借贷）机构的性质定性为信息中介，从而不得提供增信服务。同时明确了个体网络借贷属于民间借贷的范畴，换言之，个体网络借贷无需牌照但需要受到“同期利率4倍以上不受保护”等原则的限制。此外，《意见》还要求开设网站从事互联网金融业务的组织或个人向电信部门履行网站备案手续。此种备案的性质还需待主管部门出台相关细则后予以明确。若沿用ICP备案，则与现行监管方式一致。

《意见》在近年来互联网金融迅速发展的背景下出台，明确了各部门对互联网金融的监管职责，是规范这一新兴行业发展的开端，我们将继续关注相关监管部门对具体细则的制定和发布。

DISPUTE RESOLUTION / 争议解决

Supreme People's Court Issued Official Reply to Resolve Jurisdictional Disputes Arising from the CIETAC Split 最高法公布批复解决仲裁管辖权纷争

Numerous disputes concerning jurisdiction over arbitration cases, enforcement of arbitration awards and other arbitration issues have arisen due to the revision by the China International Economic and Trade Arbitration Commission ("CIETAC") of its arbitration rules, the change in the names of the former CIETAC South China Sub-commission ("South China Sub-commission") (now renamed as South China International Economic and Trade Arbitration Commission, herein after "South China Arbitration Commission") and CIETAC Shanghai Sub-Commission ("Shanghai Sub-Commission") (now renamed as Shanghai International Economic and Trade Arbitration Commission, hereinafter the "Shanghai Arbitration Commission"). To resolve those disputes, the Supreme People's Court issued the *Official Reply to the*

Questions of Shanghai Higher People's Court, etc. on the Judicial Review of Arbitral Awards Made by China International Economic and Trade Arbitration Commission and Its Former Sub-commissions, etc. (the "Reply"), which has become effective since July 17, 2015.

The Reply clarifies principles for determining jurisdiction of the aforesaid arbitration commissions by taking the date when the two sub-commissions changed their names (the "Change Date") as the cut-off point: (i) where the parties have agreed to submit their disputes to Shanghai Sub-commission or South China Sub-commission by entering into an arbitration agreement before the Change Date, then the Shanghai Arbitration Commission or the South China Arbitration Commission shall

have jurisdiction over those disputes; (ii) where such agreement was entered into on or after the Change Date but prior to the effective date of the Reply, CIETAC shall have jurisdiction. However, if one party already submitted the disputes to the Shanghai Arbitration Commission or the South China Arbitration Commission, and the other party did not raise any objection, the courts will not support any party's application to void or resist enforcement of an effective arbitral award on the ground that the arbitration commission has no jurisdiction under the above principles; (iii) where such agreement was entered into on or after the effective date of the Reply, CIETAC shall always have jurisdiction over the disputes.

In addition, where both CIETAC and

the Shanghai Arbitration Commission/ the South China Arbitration Commission have accepted the same dispute before the effective date of the Reply and one party applies to a court to confirm the validity of the arbitration agreement before the first arbitral hearing, the court should rule according to the above principles. Otherwise, the arbitration commission that first accepted the dispute shall have the jurisdiction.

为解决自2012年中国国际经济贸易仲裁委员会（“中国贸仲”）修订仲裁规则以及原中国国际经济贸易仲裁委员会华南分会（“贸仲华南分会”）（现已更名为华南国际经济贸易仲裁委员会，“华南贸仲”）、原中国国际经济贸易仲裁委员会上海分会（“贸仲上海分会”）（现已更名为上海国际经济贸易仲裁委员

会，“上海贸仲”）变更名称并施行新规以来所发生的仲裁机构管辖、仲裁执行等争议，最高法发布《关于对上海市高级人民法院等就涉及中国国际经济贸易仲裁委员会及其原分会等仲裁机构所作仲裁裁决司法审查案件请示问题的批复》（“《批复》”），自2015年7月17日起施行。

《批复》明确了案件管辖的原则：以两家分会更名的时间为分界点，当事人在此之前约定贸仲华南分会或者贸仲上海分会管辖的案件，由更名后的华南贸仲或者上海贸仲管辖。在此之后（含更名之日），《批复》出台之前约定的贸仲华南分会或者贸仲上海分会管辖的案件，由中国贸仲管辖。但对于未按照上述案件管辖原则受理的案件，对方当事人没有异议的，当事人申请撤销或不予执行已作出的仲裁裁决的，法院不予支持。当事人在批复施行之后（含施行起

始之日）签订仲裁协议约定将争议提交“中国国际经济贸易仲裁委员会华南分会”或者“中国国际经济贸易仲裁委员会上海分会”仲裁的，中国贸仲对案件享有管辖权。

此外，在《批复》施行之前，中国贸仲或者华南贸仲、上海贸仲受理了同一仲裁案件，当事人在仲裁庭首次开庭前向法院申请确认仲裁协议效力的，法院根据《批复》的管辖原则进行裁定；若当事人未于首次开庭前申请效力确认，则先受理的仲裁机构对案件享有管辖权。

CROSS-BORDER INVESTMENT / 跨境投资

Draft Administrative Regulations on Government Approval and Filing of Investment Projects Released for Public Comments

《政府核准和备案投资项目管理条例》征求意见

Recently, the Legislative Affairs Office of the State Council released the *Draft Administrative Regulations on Government Approval and Filing of Investment Projects* (the “Draft”) to seek public comments. The Draft specified issues concerning application documents, basic procedures, review for and effectiveness of project approvals, filing of projects, special rules for overseas investment projects, etc. As an administrative regulation, once adopted the Draft will have higher legal authority than *Administrative Measures for Government Approval of Investment Projects, Administrative Measures for Approval and Filing of Foreign Investment Projects and Administrative Measures for Approval and Filing of Overseas Investment Projects*, the three department rules issued by the National Development and Reform Commission (or the “NDCR”) in 2014. This signals that the government is devoting more attention to administration of investment projects.

The Draft applies to both domestic non-government funded fixed asset investment projects invested by all types of enterprises and overseas

investment projects invested directly by domestic enterprises or through overseas entities. This indicates that NDRC will no longer take different regulation approaches for domestic and foreign investment projects and will include outbound investment into a unified regulation scheme. To implement the policy of “streamlining administration and institute decentralization”, the Draft also adopted a level-by-level filing system based on territorial principle, under which provincial governments will be authorized to set rules regarding filing measures and filing authorities within their own administrative areas. In addition, the Draft indicated that the State Council will make and release the *Catalogue of Investment Projects subject to Government Approvals* to specify the scope of investment projects subject to government approvals and the approval authorities of the relevant government departments. It is noteworthy whether the new catalogue to be issued in the future will cut down the scope of projects subject to approvals under the current 2014 catalogue.

国务院法制办日前发布《政府核准和备案投资项目管理条例（征求意见稿）》

（“《征求意见稿》”）。《征求意见稿》明确了项目核准的申请文件、基本程序、审查及效力、项目备案、境外投资项目的特别规定等。《征求意见稿》最终通过后将作为行政法规颁布，比国家发展和改革委员会（“发改委”）2014年发布的《政府核准投资项目管理办法》、《外商投资项目核准和备案管理办法》和《境外投资项目核准和备案管理办法》等部门规章级别要高，表明政府对立项管理重视程度的加强。

在适用范围方面，《征求意见稿》统一适用于各类企业在中国境内不使用政府投资建设的固定资产投资项目和中国境内各类企业及其通过境外企业或机构实施的境外投资项目，表明发改委在境内项目投资管理方面不再区分内外资，同时将对外投资纳入统一规范的体系。

《征求意见稿》同时规定了按属地原则分级备案制度，由各省级政府制定本行政区域内项目的备案管理办法和分级备案权限，是落实简政放权的体现。另外，根据《征求意见稿》国务院将制定和颁布《政府核准的投资项目目录》以明确核准管理项目的具体范围以及项目核准机关的核准权限，新版目录是否会缩小2014版目录的核准范围值得关注。

TAXATION / 税收

SAT Clarified Certain Issues concerning Tax Administration of Enterprise Reorganizations

国税总局发文明确企业重组业务企业所得税征收管理若干问题

On June 24, 2015, the State Administration of Taxation issued the *Announcement on Several Issues concerning the Collection and Administration of Enterprise Income Tax on Enterprise Reorganization* (the "Announcement"), which applies to the enterprise income tax settlement for 2015 and thereafter.

The Announcement revised rules relating to the declaration for special tax treatment on enterprise reorganization and standardizes relevant practices. Specifically, enterprises are no longer required to conduct filing with (as provided in Article 11 of the *Circular on Several Issues concerning Enterprise Income Tax Treatment on Enterprise Reorganization*) or obtain confirmation from (as provided in Article 16 of the *Administrative Measures for Enterprise Income Tax on Enterprise Reorganization*) tax authorities in advance in order to enjoy special tax treatment. Instead, enterprises will only need to make declarations and submit relevant materials during annual tax settlement. The

Announcement also clarified relevant administrative measures. For example, it is provided that, after the leading party of the reorganization has made declaration with its tax authority, other parties concerned shall submit the reporting forms filled by the leading party and accepted by its tax authority to their tax authorities respectively in order to make their own declarations. In addition, the Announcement further emphasized obligations of the parties to reorganizations and duties of tax authorities in the tax collection and administration for the special tax treatment.

The Announcement abolished the prior approval requirement for electing special tax treatment on reorganization, which provides room for enterprises to optimize their tax planning. However, the Announcement strengthened the ongoing post-transaction tax administration through clarifying obligations of reorganization parties, to which enterprises should pay more attention.

国税总局于2015年6月24日下发《关于企业重组业务企业所得税征收管理若干问题的公告》（“《公告》”），适用于2015年度及以后企业所得税汇算清缴。

《公告》对企业重组特殊性税务处理的申报管理和后续管理进行了规范和修订。其中，《公告》不再执行《关于企业重组业务企业所得税处理若干问题的通知》（“59号文”）第十一条不备案不得进行特殊性税务处理和《企业重组业务企业所得税管理办法》（“4号公告”）第十六条税务机关确认的做法，改为企业年度汇算清缴时进行申报并提交相关资料，明确了“重组主导方申报后，其他当事方应持经重组主导方主管税务机关受理的报告表及附表和申报资料向其主管税务机关申报”等管理内容。此外，《公告》还强调了重组特殊性税务处理征收管理中重组各方义务和税务机关责任。

《公告》取消企业重组选择特殊税务处理的事前核准，为企业优化税务筹划提供了空间，但作为一项重要的后续管理事项，《公告》通过明确征纳双方的义务和责任加强了对企业重组特殊性税务处理的后续管理，企业需对此给予更多关注。

ENVIRONMENTAL LAW / 环境法

Measures on Public Participation in Environmental Protection Released 环保部公布《环境保护公众参与办法》

On July 13, 2015, the Ministry of Environmental Protection released the *Measures on Public Participation in Environmental Protection* (the "Measures"), which will take effect on September 1, 2015. The Measures will apply to the participation by individual citizens, legal persons and other organizations in environmental protection-related public affairs such as formulating policies and regulations, implementing

administrative licensing or administrative punishment, monitoring illegal activities, and carrying out publicity and education. Furthermore, the Measures clarified that individual citizens, legal persons and other organizations have the right to report environmental pollution and ecological destruction acts to environmental authorities, while in the meantime specified relevant reporting procedures and obligations of the government

supervising authorities.

环保部于2015年7月13日对外公布《环境保护公众参与办法》（“《办法》”），《办法》自2015年9月1日起施行。《办法》适用于公民、法人和其他组织参与制定政策法规、实施行政许可或行政处罚、监督违法行为、开展宣传教育等环保公共事务活动。《办法》明确了公民、法人和其他组织可以向环境保护主管部门举报污染环境和破坏生态环境行为，同时规定了相应的举报程序和监管部门的义务等。

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