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MACRO-POLICY / 宏观政策

The State Council Issued a Series of Policies on SOE Reform and New Economic System 国务院密集出台国企改革、经济新体制等若干政策

This month, the State Council issued a series of general guidelines, aiming at further promoting market-oriented reform and economic development.

On September 13, 2015, the CPC Central Committee and the State Council issued the *Guiding Opinions on Deepening the Reform of State-owned Enterprises* (SOEs) (the "Guiding Opinions"), in an effort to promote the corporate and stockholding system reform for SOEs, and to encourage private investors to participate in the restructurings of SOEs, capital increase of state-controlled listed companies, and management of SOEs through various approaches including capital contribution, share acquisition, purchase of convertible bonds and stock swap, etc. Furthermore, the Guiding Opinions state that projects in line with industrial policies and conducive to transformation and industry upgrade shall be put in place for private capital in sectors such as petroleum, natural gas, power, railway, telecommunication, resource exploitation and public utility. The State Council has issued the *Opinions on Mixed Ownership Development of SOEs* as a supporting document on September 24, 2015, stating that foreign capital shall be introduced in the restructurings of SOEs through outbound M&As, investment and financing cooperation, offshore financing, etc. and security review mechanism for foreign investment shall be improved in accordance with the *Catalogue for Guidance of Foreign Investment Industries* and other related rules.

On September 17, 2015, the CPC Central Committee and the State

Council issued *Several Opinions on Building up an Open Economic System* (the "Opinions"). The Opinions propose to enact new fundamental law for foreign investment, under which foreign and domestic investors will be subject to the same rules in general aspects such as company formation and operation, and the "negative list" approach will be adopted to regulate market access of foreign investment. As such proposed reform was already included in the *Draft Foreign Investment Law* issued by the Ministry of Commerce in January 2015, the issuance of the Opinions is a sign that the *Foreign Investment Law* may be finalized and promulgated soon in the near future. Moreover, the Opinions propose to accelerate the establishment of QDII2 system, expand the cross-border use of RMB, further open up to Hong Kong, Macao and Taiwan, develop various types of outbound investment funds, and encourage enterprises from the mainland and Hong Kong/Macao to cooperate through setting up investment funds.

In addition, the State Council also issued several guiding documents to encourage and support cross-border financial leasing, cross-border RMB businesses of financial leasing companies, active use of big data to simplify the administrative procedures for business registration and market access, etc. However, all those documents are guiding opinions and the detailed implementing rules are yet to be promulgated by relevant authorities.

本月，国务院密集出台了一系列宏观性的指导方针，旨在进一步推动市场化改

革，促进经济发展。

9月13日发布的《中共中央、国务院关于深化国有企业改革的指导意见》（“《指导意见》”）提出要推进公司制股份制改革，鼓励各类非国有资本投资主体通过出资入股、收购股权、认购可转债、股权置换等多种方式，参与国有企业改制重组或国有控股上市公司增资扩股以及企业经营管理，并在石油、天然气、电力、铁路、电信、资源开发、公用事业等领域，向非国有资本推出符合产业政策、有利于转型升级的项目。国务院已于9月24日发布《关于国有企业发展混合所有制经济的意见》提出配套措施，进一步明确要引入外资参与国有企业改制重组、合资合作，鼓励通过海外并购、投融资合作、离岸金融等方式发展混合所有制经济，并依照外商投资产业指导目录和相关安全审查规定，完善外资安全审查工作机制。

9月17日发布的《中共中央、国务院关于构建开放型经济新体制的若干意见》（“《意见》”）提出要制定新的外资基础性法律，对于外资企业组织形式、经营活动等一般内容，可按照内外资一致的原则适用统一的法律法规，在外资准入方面引入“负面清单”机制。这些要求在商务部于2015年1月发布的《外国投资法草案》中已有体现，《意见》的进一步明确将推动《外国投资法》的最终出台。同时，《意见》还提出加快建设合格境内个人投资者制度（QDII2），扩大人民币跨境使用，扩大对港澳台地区开放，并鼓励发展多种形式的境外投资基金，鼓励内地企业和港澳企业联合成立投资基金展开合作。

此外，国务院还发布了一系列文件，在鼓励跨境融资租赁、支持金融租赁公司开展跨境人民币业务、积极运用大数据手段简化注册登记和市场准入等商事服务的办理程序等方面提出了相应的指导性意见，但相关配套政策仍待落实。

CAPITAL MARKET / 资本市场

SSE and SZSE Regulated Information Disclosure concerning "PE + Listed Companies" Mode 沪深证券交易所规范“PE+上市公司”信息披露

In an effort to regulate the unjust interest relationship arising from the cooperation of private equity funds and listed companies under the popular "PE + Listed Companies" mode (e.g. private equity funds to subscribe for shares of listed companies, to jointly set up buyout funds with listed companies, or enter into other contractual arrangements with listed companies), Shanghai

Stock Exchange ("SSE") and Shenzhen Stock Exchange ("SZSE") recently issued several documents to set out explicit requirements on listed companies' information disclosure concerning their investment cooperation with professional investment institutions. These documents include the *Guidelines on Information Disclosure concerning Investment Cooperation Between*

Listed Companies and Private Equity Funds issued by SSE, and several *Memoranda on Information Disclosure* issued by SZSE for companies listed on main board, small and medium enterprises board and growth enterprise board. However, the aforesaid documents are not applicable to professional investment activities routinely conducted by securities companies and other listed

financial companies.

These documents not only specify the situations and entities subject to the new rules, but also set out detailed disclosure requirements for different cooperation patterns and stages. To avoid improper related party transactions, the listed companies shall disclose information concerning whether private equity funds or professional investment institutions are affiliated or have any interest arrangement with listed companies or their controlling shareholders, actual controllers, directors, supervisors and senior officers, and whether those funds or institutions directly or indirectly hold shares of listed companies, etc.

It is noteworthy that, among others, the information disclosure

requirements of SSE and SZSE are not exactly the same, so the companies listed in SSE and SZSE may follow different rules. To meet the new requirements, listed companies should disclose information in strict compliance with related rules, while investment institutions also need to pay more attention on compliance issues when cooperating with listed companies.

为规范自2014年以来愈演愈热的“PE+上市公司”模式（主要表现为私募基金认购上市公司股份、与上市公司共同设立并购基金或形成其他相关协议安排等）中可能出现的私募基金与上市公司之间的不正当利益关系和安排，近日，上海证券交易所发布《上市公司与私募基金合作投资事项信息披露业务指引》，深圳证券交易所分别发布针对主板、中小企业板和创业板的上市公司与

专业投资机构合作投资《信息披露业务备忘录》，对上市公司信息披露提出明确要求。上述文件均将证券公司等金融类上市公司作为日常经营业务所从事的专业投资活动排除在适用范围以外。

该等文件详细列明了适用情形和相关主体范围，并就各种合作情形和各阶段的信息披露作出了具体要求。该等文件均明确要求披露私募基金/专业投资机构是否与上市公司存在关联关系或利益安排、是否与上市公司控股股东、实际控制人、董事、监事、高级管理人员存在关联关系或利益安排、是否以直接或间接形式持有上市公司股份等信息，以防范不当关联交易。

需注意的是，沪深交易所对各自上市公司的信息披露要求并不完全一致。上市公司需严格按照相关文件进行信息披露，投资机构在与上市公司的合作过程中也需更加严谨合规。

NDRC Abolished Foreign Debt Quota Approval

发改委取消企业发行外债额度审批

In May 2015, the State Council issued announcement to remove NDRC's power to approve enterprise's foreign debt quota. To implement this decision, NDRC officially released the *Notice on Promoting Administrative Reform on Filing and Registration System for Enterprises Issuing Foreign Debt* (the "Notice") on September 15. The Notice defined "foreign debt" as liability instruments (including offshore bond issuance, mid- and long-term international commercial loans, etc.) issued by domestic enterprises or their foreign enterprises/subsidiaries toward foreign entities, with maturity term of over one year and quoted in RMB or foreign currencies. The Notice adopted a filing regime with national quota control system to replace the previous NDRC approval system. Enterprises shall submit filing materials with NDRC before issuing foreign debt and NDRC will decide whether to accept the filing or not within 5 business days upon receipt of materials. If NDRC decides to accept the filing and the proposed

foreign debt is within the national quota, it shall issue certificates within 7 business days upon acceptance. Enterprises may use the collected foreign debt at home or abroad based on their needs. As a countermeasure to economic downturn, such administrative streamlining facilitates enterprises to raise low-cost foreign funds. However, it is noteworthy that, the Notice expanded the application scope from domestic enterprises to their foreign enterprises/subsidiaries, and did not, as NDRC used to, exclude foreign invested enterprises (since they are subject to the regulation of "total investment/registered capital" regime). Concerning that SAFE is still responsible for cross-border fund flow control, it remains to be seen how NDRC and SAFE would coordinate with each other and whether this advance filing system will turn out to be another kind of approval in practice.

自2015年5月国务院发文取消国家发改委对企业发行外债的额度审批事项后，9月15日，发改委正式出台《关于推进

企业发行外债备案登记制管理改革的通知》（“《通知》”）以落实上述要求。《通知》所称外债为“境内企业及其控制的境外企业或分支机构向境外举借的、以本币或外币计价、按约定还本付息的1年期以上债务工具，包括境外发行债券、中长期国际商业贷款等”，将此前发改委对企业发行外债的额度审批改为备案登记制管理，并实行规模总量控制。企业发行外债，须事前向国家发改委申请办理备案登记手续，发改委在收到申请后5个工作日决定是否予以受理，自受理之日起7个工作日内，在外债总规模限额内出具备案登记证明。企业募集的外债资金可根据实际需要自主在境内外使用。在经济下行的当前，此举不失为鼓励企业利用境外低成本资金的一项资本项目举措。但是值得注意的是，《通知》的适用范围从原来的境内企业扩大至境内企业及其控制的境外企业或分支机构，且没有如发改委此前的规定一样将实行“投注差”借债管理的外商投资企业排除在外。鉴于资本跨境流动仍受到外管局监管，上述扩大的职权如何与外管局衔接，以及发改委的事前备案是否会转变为变相审批，该等问题仍有待观察。

OTHER DEVELOPMENTS / 其他要闻

CIRC Allows Insurance Capital to Sponsor Private Equity Fund

保监会允许险资设立私募基金

After allowing the investment of insurance capital in equity of enterprises at mature and starting stages, the China Insurance Regulatory Committee ("CIRC") recently released the *Notice on Matters Relevant to Establishing Insurance Private Equity Funds* (the

"Notice"), allowing insurance capital to directly sponsor insurance private equity funds targeting equity investment in order to further encourage the use of insurance capital to boost real economy. Pursuant to the Notice, the sponsor of such private equity fund shall be a subsidiary of an

insurance capital management institution. The establishment of insurance private equity funds is not only subject to the general filing requirement for PE funds, but also the registration requirement under which the insurance capital management institution or the sponsor shall apply

with CIRC to go through relevant procedures. The Notice also set up specific rules on various aspects of insurance private equity funds, such as shareholding, investment projects, personnel and operation, etc.

继逐步放开保险资金投资成熟期企业和

初创期企业股权后，近日，保监会发布《关于设立保险私募基金有关事项的通知》（“《通知》”），允许保险资金直接设立私募基金进行股权投资，以进一步鼓励利用险资支持实体经济。根据《通知》，私募基金的发起人应当由保险资产管理机构的下属机构担任。保险

资金设立私募基金实行注册制，由保险资产管理机构或者基金发起人向保监会申请办理相关手续，并仍需按照私募基金的一般要求进行备案管理。《通知》还在私募基金的股比、项目、人员、运作等方面提出了具体要求。

Beijing Court Upheld the Validity of Crowdfunding Contract in China's First Crowdfunding Case 全国首例众筹融资案一审判定众筹融资合同有效

On September 15, the Beijing Haidian District People's Court announced the judgment of first instance on the dispute arising from a financing service contract between the restaurant company Beijing Normido and the financing platform operator Beijing Feidu, under which Beijing Normido entrusted Beijing Feidu to raise funds on its platform “Renrentou” for Beijing Normido's business

operation. The court ruled that such contract is valid and constitutes a brokerage relationship between the parties. Since currently there is no clear rule applicable to crowdfunding, the judgment of Haidian court provided guidance from legal perspective and left room for future development of online financing business.

9月15日，北京市海淀区人民法院发布

信息，已对北京诺米多餐饮管理有限责任公司与北京飞度网络科技有限公司合同纠纷一案作出一审判决，认定双方就前者为实体经营目的委托后者在其运营的“人人投”平台上融资而签订的《委托融资服务协议》依法有效，且双方之间成立居间法律关系。在目前尚无法律明确规定私募众筹融资的背景下，海淀法院的判决起到了一定的指引作用，为互联网金融行业的发展留下了空间。

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