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CROSS-BORDER INVESTMENTS / 跨境投资

Series of Measures and Guidelines Adopted to Offer Greater Access for QFII/RQFIIs' Investments in China 国家出台一系列合格境外投资者境内投资相关法规

为进一步深化境外机构投资者制度改革，继中国人民银行（“人行”）、国家外汇管理局（“外汇局”）于2020年5月发布相关规定正式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”，与QFII统称为“合格境外机构投资者”）的境内投资额度限制、简化合并QFII与RQFII的管理机制之后（具体分析请见我所《每月立法动态》2020年5、6月合刊），中国证券监督管理委员会（“证监会”）、人行及外汇局于2020年9月25日联合发布了《合格境外机构投资者和人民币合格境外机构投资者境内证券期货投资管理办法》以及相应配套规则，中国证券登记结算有限责任公司（“中证登”）、上海证券交易所及深圳证券交易所也于2020年10月30日相继颁布QFII和RQFII的证券交易规则指引及实施细则（统称为“QFII新规”）。QFII新规自2020年11月1日起施行，主要从以下方面优化、完善了对合格境外机构投资者的管理：

1. **放宽准入条件。** QFII新规取消了对于境外投资机构的经营年限、资产规模等方面的具体量化要求，将“证监会认可的机构”作为兜底规定，并将申请材料中的“金融业务许可证”改为了“业务经营资格证明材料”，使准入条件更加灵活。结合实践中的审批情况，我们理解，证监会很有可能将允许私募股权投资基金、对冲基金等境外机构申请QFII/RQFII资质。
2. **扩大投资范围。** 除原有投资品种外，QFII新规将合格境外机构投资者的投资范围扩大至期货、期权等金融衍生品、新三板股票、私募投资基金（但该等基金的最终投资范围不得超过合格境外机构投资者的投资范围）等。
3. **增加非交易过户情形。** 在原规定下，合格境外机构投资者仅能在发生错误交易时办理非交易过户（即直接进行证券划转）。根据QFII新规，境外机构如通过QFII或RQFII作为管理人以客户资金形式投资的，该境外机构在更换管理人或自身取得合格境外机构投资者资质时，均可通过合格境外机构投资者向中证登申请非交易过户，增加了投资的灵活性。

在金融业全面开放的背景下，QFII新规的出台进一步提升了境外机构参与中国资本市场的便利程度，我们将对其实践执行情况保持持续关注。

To deepen the reforms of administration on foreign institutional investments, following the provisions jointly released by the People's Bank of China (“PBOC”) and the State Administration of Foreign Exchange (“SAFE”) in May 2020 to remove the quota limits and unify registration administrations on Qualified Foreign Institutional Investors (“QFIIs”) and RMB Qualified Foreign Institutional Investors (“RQFIIs”, together with QFIIs, the “Qualified Foreign Investors”) (please refer to our May & June 2020 issue of *China Regulatory Updates* for details), the China Securities Regulatory Commission (“CSRC”), PBOC and SAFE jointly issued the *Measures for the Administration of Investments in Domestic Securities and Futures by Qualified Foreign Institutional Investors and RMB Qualified Foreign Institutional Investors*, as well as relevant implementation measures on September 25, 2020. Shortly thereafter, the China Securities Depository and Clearing Corporation Limited (“CSDC”), the Shanghai Stock Exchange and the Shenzhen Stock Exchange successively issued measures and guidelines on securities trading by QFIIs and RQFIIs on October 30, 2020 (all the above mentioned documents, collectively, the “New QFII Regulations”). The New QFII Regulations have taken effect on November 1, 2020, with major changes including, among others:

1. **Lowered Thresholds for Eligible Applicants.** The New QFII Regulations have streamlined the eligibility requirements on Qualified Foreign Investors by removing certain quantitative criteria such as the scale of assets managed by the investors and their business experiences. It has expanded the scope of eligible applicants to include not only investors with financial business licenses but also all types of foreign institutional investors recognized by CSRC, which, based on recent cases approved by CSRC, is likely to even include PE fund managers, hedge fund managers and other overseas institutional investors as well.
2. **Expanded Scope of Permitted Investments.** In addition to the existing investment categories, under the New QFII Regulations, Qualified Foreign Investors are allowed to invest in, among others, financial derivatives such as financial and commodity futures, shares traded on the “New Third Board” (i.e., China's OTC board) and private securities investment funds where the ultimate investment scope of which conforms to the Qualified Foreign Investors' investment scope.
3. **Added New Conditions for Transfers unrelated to Trading.** Before the New QFII Regulations, the no-trading transfer (i.e., share transfers made through CSDC directly from one party to another) was only applicable to corrections of trading errors by Qualified Foreign Investors. Now the Qualified Foreign Investors, when acting as fund managers, are allowed to apply for no-trading transfers on behalf of their clients' funds contributed by overseas investors if such overseas investors replace their fund managers or obtain a QFII/RQFII license by themselves, offering more flexibilities to foreign investments in China.

In the context of an overall opening-up reform in the financial industry, the New QFII Regulations take a step forward to provide foreign investors with more convenient opportunities to participate in China's capital market. We will continue to monitor major developments in this connection and update our clients accordingly.

INTELLECTUAL PROPERTY / 知识产权

Newly Amended Patent Law Adopted 新修改专利法获通过

2020年10月17日，第十三届全国人民代表大会常务委员会第二十二次会议审议通过《关于修改〈中华人民

On October 17, 2020, the 22nd session of the Standing Committee of the 13th National People's Congress passed the *Decisions on*

共和国专利法》的决定》，修改后的《专利法》（“新《专利法》”）将自2021年6月1日起施行。

新《专利法》主要从加强对专利权人合法权益的保护、促进专利实施和运用、完善专利授权制度等方面对现有规定进行了修改完善。其中特别值得注意的是，新《专利法》加大了侵权惩罚力度，一方面引入惩罚性赔偿制度，即对故意侵犯专利权、情节严重的行为，人民法院可以在按照权利人受到的损失、侵权人获得的利益或者专利许可使用费倍数计算的数额1到5倍内确定赔偿数额；另一方面也将法定赔偿额的上限提高至500万元、下限提高至3万元。特别地，对于药品专利，新《专利法》设立了药品专利纠纷早期解决机制（即一些境外法域适用的药品专利链接制度），以期在药品上市审批过程中能够尽早解决相关的专利侵权争议，更好地平衡创新药专利权人、仿制药企业及社会公众之间的利益；并同时增加了关于药品专利期限补偿的规定，即为补偿新药上市审评审批过程中占用的时间，对获批上市的新药相关专利，可以应专利权人的请求给予专利权期限的补偿。

LABOR LAW / 劳动法

Tax Authorities to Collect Social Security in Several Cities 多地社保费用正式交由税务部门征收

为落实国务院关于社会保险费征收体制改革的部署，北京、上海、深圳等多地政府机关于2020年10月30日纷纷发布相关公告，明确规定企业职工各项社会保险费将由当地税务部门统一征收。虽然根据上述公告，社保费用的征收范围、缴费基数核定及缴纳方式等基本保持不变，但相较于此前负责社保费用征收的人力资源与社会保障部门，税务部门能够更好地掌握企业的财务信息并且具备更强的社保征收监管与执行能力，因此企业未来应当更加注意社保费用缴纳方面的合规风险。

Revising the PRC Patent Law. The revised *Patent Law* (the “New Patent Law”) will take effect on June 1, 2021.

The New Patent Law made some major revisions and improvements in such key aspects as strengthening the protection of the legitimate rights and interests of patent owners, promoting the implementation and application of patents, and improving the patent use authorization system. It is noteworthy, among others, that the New Patent Law now introduces a punitive damage system, under which the infringing party in malicious patent infringement cases could be held responsible for damages of up to five times the amount of actual losses suffered by the patent owner, the profits obtained by the infringing party, or the royalties of such patent. Meanwhile, the statutory indemnifications for patent infringements are increased and could range from RMB30,000 to RMB5 million. Specifically, with respect to the drug patents, the New Patent Law has introduced an early dispute resolution mechanism that is similar to the drug patent linkage system currently adopted by several foreign jurisdictions, aiming to solve patent infringement disputes before a new drug is put into market, so that the interests of the patentees, the generic drug manufacturers and the general public could be better balanced. In addition, for patent terms shortened as a result of delays in regulatory approval process, the underlying patent owners may apply for a compensation in patent terms.

To implement the State Council’s plan for reform of social security collection system, several cities including Beijing, Shanghai and Shenzhen simultaneously issued relevant governmental notices on October 30, 2020, stipulating that tax authorities will officially take over the collection of social security contributions. Though the collection scope, contribution base and method of social security remain basically unchanged, tax authorities may have more information about enterprises’ financial situations and stronger enforcement capabilities, compared to human resources and social security authorities which were previously responsible for social security collection. Therefore, enterprises shall pay more attention to social security compliance in the future.

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

CONTACT US

上海市中山西路2020号
华宜大厦1座1801室
邮编：200235
电话：(86-21) 6083-9800



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