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TABLE OF CONTENTS / 本期内容

COMPANY LAW / 公司法

Amendments to *Company Law* Officially Released / 《公司法修正案》
正式颁布 2

CAPITAL MARKET / 资本市场

CSRC Officially Released Depository Receipt Rules for Shanghai-
London Stock Connect / 证监会正式发布沪伦通监管规定 2

Series of Supporting Rules on M&A and Restructuring of NEEQ-Listed
Companies Issued / 新三板公司并购重组系列支持政策落地 3

FOREIGN INVESTMENT / 外商投资

Tax Deferral for Overseas Investors Expanded / 境外投资者再投资的
递延纳税适用范围扩大 3

NEW ECONOMY / 新经济

CAC Promotes Regulation on Block-Chain Industry / 网信办推动区块
链行业立法监管 4



COMPANY LAW / 公司法

Amendments to *Company Law* Officially Released 《公司法修正案》正式颁布

2018年10月26日，全国人大常委会正式公布了关于修改《中华人民共和国公司法》的决定（“《公司法修正案》”），对《公司法》第142条有关公司股份回购的规定进行了专项修改，自公布之日起施行。

《公司法修正案》对上市公司股份回购情形、决策程序以及库存股安排等方面的规定与此前发布的征求意见稿基本一致（具体分析请见我所《每月立法动态》2018年10月刊），但增加了对上市公司股份回购程序的规定，即上市公司回购股份应当依照证券法规定履行信息披露义务，且在三种情形下的股份回购应当通过公开的集中交易方式进行：(i)用于员工持股计划或股权激励；(ii)用于发行可转债；以及(iii)上市公司为避免公司遭受重大损害，维护公司价值及股东权益所必需。即在上述三种情形下，上市公司不得通过协议转让的方式回购公司股份。

《公司法修正案》提升了上市公司回购公司股份的自由度，有利于上市公司稳定股价、优化资本结构，自公布之后，多家上市公司发布相关公告、推出回购方案。我们会对《公司法修正案》涉及的配套业务规则、相关的信息披露要求以及后续实践保持持续关注。

On October 26, 2018, the Standing Committee of the PRC National People's Congress officially released the *Decision on Amendments to Article 142 of the Company Law* (the "Amendments"), relaxing restrictions on share repurchases by listed companies. The Amendments have already taken effect from the date of publication.

The Amendments redefined the repurchase situations, the decision-making procedure and the treasury share arrangement of listed companies, generally consistent with the previously released draft amendment (please refer to our October 2018 issue of *China Regulatory Updates* for details). The Amendments further set out repurchase procedures requiring listed companies to fulfill their information disclosure obligations pursuant to securities laws and regulations and to repurchase their shares through centralized public trading if they use the repurchased shares (i) for employee stock ownership plans or equity incentives; (ii) for equity conversion of convertible bonds; or (iii) as a necessity to defend their corporate value and protect shareholders' interests. In other words, listed companies may not repurchase their shares by means of contractual transfers in these three situations.

The Amendments are expected to improve share repurchase flexibilities, stabilize share prices and optimize capital structure of listed companies. A few listed companies have announced their repurchase notices and plans since the release of the Amendments. We will continue to monitor the implementing guidelines for the Amendments, the relevant information disclosure requirements and the corresponding PRC practice in this connection.

CAPITAL MARKET / 资本市场

CSRC Officially Released Depositary Receipt Rules for Shanghai-London Stock Connect 证监会正式发布沪伦通监管规定

证监会于2018年10月12日正式发布了《关于上海证券交易所与伦敦证券交易所互联互通存托凭证业务的监管规定(试行)》（“《沪伦通监管规定》”）。同一天，上海证券交易所（“上交所”）和中国证券登记结算有限责任公司也发布了相关的配套业务规则并向社会公开征求意见。

根据《沪伦通监管规定》，沪伦通业务包括东、西两个方向，东向业务是指伦敦证券交易所（“伦交所”）上市公司在上海证券交易所挂牌中国存托凭证(CDR)，西向业务是指上交所A股上市公司在伦交所挂牌全球存托凭证(GDR)。东向业务暂不允许伦交所上市公司通过新增股份发行CDR的方式在中国市场直接融资，但上交所A股上市公司则可通过发行以新增股票为基础证券的GDR直接在英国市场融资。东西两个业务方向都允许存托凭证与基础证券之间按既定比例互相转换。

《沪伦通监管规定》明确了沪伦通CDR发行审核制度、CDR持续监管要求、境内上市公司境外发行GDR的监管安排、跨境转换制度安排及相关参与主体的法律责任，确立了沪伦通业务的基本监管规则。我们将

The China Securities Regulatory Commission (the "CSRC") issued the *Trial Rules for Depositary Receipt Business in Shanghai-London Stock Connect Program* (the "Trial Rules") on October 19, 2018. On the same day, the Shanghai Stock Exchange (the "SSE") and the China Securities Depository and Clearing Co., Ltd. issued supporting measures and guidelines for public comments.

The Trial Rules allow stocks listed on SSE and London Stock Exchange to be traded in each other's market through the issuance of depositary receipts (including two business directions, i.e., the "Eastward Trading" and the "Westward Trading"). Under the Eastward Trading, the London-listed companies may issue China Depositary Receipts (CDRs) in SSE, and the Shanghai-listed domestic companies may issue Global Depositary Receipts (GDRs) on the London bourse under the Westward Trading. London-listed companies cannot raise new capital through issuing CDRs, while in the other direction, the Shanghai-listed companies may finance directly in the UK market through the issuance of GDRs based on additional stocks as underlying securities. Both Eastward Trading and Westward Trading allow depositary receipts to be converted to and from underlying securities in a predetermined ratio.

The Trial Rules provide detailed procedures and requirements for issuance of CDRs and GDRs, such as the CDR approval system and continued regulatory compliance requirements, the GDR law enforcement, cross-border transaction arrangement, and the responsibilities and liabilities of relevant parties. We will continue to monitor and update on the regulatory developments

对后续配套业务规则及市场实践保持持续关注。

and the corresponding PRC practice in this connection.

Series of Supporting Rules on M&A and Restructuring of NEEQ-Listed Companies Issued 新三板 公司并购重组系列支持政策落地

2018年10月26日，证监会及全国股转系统相继发布涉及新三板企业并购重组的解释性文件，包括《〈非上市公众公司重大资产重组管理办法〉第十八条、第十九条有关规定的适用意见》（“《适用意见》”）、《非上市公众公司重大资产重组业务指引》及《挂牌公司重大资产重组业务问答》等业务规则（合称“《业务规则》”），对新三板公司的并购重组制度进行了优化改革。具体而言，主要有以下内容值得关注：

1. 放宽发行对象条件：《适用意见》明确新三板公司定向发行股份购买资产时，(i)发行对象人数不再受35人的限制，并且(ii)允许不合格投资者（持股平台除外）以受限投资者身份参与认购。
2. 完善重大资产重组的认定标准：《业务规则》明确新三板公司购买用于生产经营的土地、房产的行为不再按照重大资产重组进行管理，以进一步减轻其信息披露负担、提高交易效率。
3. 规范停复牌制度：为规范新三板公司因重组事项长期停牌的现象，《业务规则》对重组停复牌机制作出细化规定，明确停牌时间已达或超过6个月的，可申请延期一次，但延期时间至多不超过1个月。

On October 26, 2018, CSRC and the PRC National Equities Exchange and Quotations Co., Ltd. (the “NEEQ”) issued a series of interpretation documents on M&A and restructuring activities involving NEEQ-listed companies, including the *Opinions on Application of Articles 18 and 19 of the Measures for Administration of Material Asset Restructuring of Unlisted Public Companies* (the “Application Opinions”), the *Amended Guidelines for Material Asset Reorganizations Business of Unlisted Public Companies*, the *Q&As on Material Asset Restructuring of NEEQ-Listed Companies* and other implementing rules (collectively, the “Implementing Rules”). Set forth below are some of the major changes worthy of attention:

1. **Relaxed Eligibility Requirements for Target Investors.** According to the Application Opinions, in the case of private placement of shares to purchase assets, (i) the number of target investors is no longer limited to 35 and (ii) the unqualified investors (*NEEQ trading has a qualified investors threshold generally*), except shareholding platforms, are allowed to participate in the subscription as restricted investors.
2. **Redefined Criteria for Material Asset Restructuring.** The Implementing Rules clarified that NEEQ-listed companies purchasing land use rights and real properties used for production and operation shall no longer be regarded and regulated as material asset restructuring, further reducing the information disclosure burden to improve transaction efficiency.
3. **Regulated Suspension Period.** To prevent the “long-term suspensions” due to various restructurings of NEEQ-listed companies, the Implementing Rules provided detailed approving procedures and the information disclosure requirements for NEEQ-listed companies applying for extended suspension periods. According to the Implementing Rules, if the suspension period has reached or will exceed six months, it may be extended only for once upon successful application which extension may however not exceed one month.

FOREIGN INVESTMENT / 外商投资

Tax Deferral for Overseas Investors Expanded

境外投资者再投资的递延纳税适用范围扩大

为进一步鼓励境外投资者在华投资，财政部、税务总局等四部委于2018年9月29日联合发布了《关于扩大境外投资者以分配利润直接投资暂不征收预提所得税政策适用范围的通知》（“《通知》”），《通知》追溯至自2018年1月1日起执行。

境外投资者境内再投资的递延纳税优惠政策于2017年12月首次出台（具体分析请见我所《每月立法动态》2018年1月刊），根据当时的规定，对于外商鼓励类投资项目，境外投资者以分配利润进行直接投资的，实行递延纳税政策，暂不征收10%的预提所得税。

《通知》将该优惠的适用范围由外商投资鼓励类项目扩大至所有非禁止外商投资的项目和领域。境外投资者因2018年1月1日以后取得的股息、红利等权益性投资收益而缴纳税款，符合《通知》条件的，可在实际缴纳相关税款之日起三年内申请追补享受递延纳税政策，退还已缴纳的税款。

To further encourage foreign investments, on September 29, 2018, the PRC Ministry of Finance and the PRC State Administration of Taxation issued the *Notice on Expansion of Policy of Temporary Exemption of Withholding Income Tax from Overseas Investors' Direct Investment with Distributed Profits* (the “Notice”), together with other two central government departments. The Notice has retrospectively taken effect since January 1, 2018.

The tax deferral policy for foreign investors' reinvestments was first released in December 2017, stated that the distributed profits to overseas investors used for domestic direct reinvestment would enjoy tax deferral and be exempted from the 10% withholding tax on a temporary basis (please refer to our January 2018 issue of *China Regulatory Updates* for details), but the policy at that time was only applicable to reinvestments in encouraged FDI projects. The Notice expanded the scope of the exemption to all FDI projects except for prohibited ones. Within three years of actual payment, overseas investors may apply for refund of the withheld taxes paid for equity investment returns (including dividends and corporate bonuses) achieved since January 1, 2018, if the conditions in the Notice are satisfied.

NEW ECONOMY / 新经济

CAC Promotes Regulation on Block-Chain Industry 网信办推动区块链行业立法监管

2018年10月19日，国家互联网信息办公室（“网信办”）发布《区块链信息服务管理规定（征求意见稿）》（“《征求意见稿》”）并向社会公开征求意见，待规定正式出台后将成为我国在区块链领域的第一部系统性法律规定。《征求意见稿》定义的区块链信息服务是指基于区块链技术或者系统通过互联网网站、应用程序等形式，向社会公众提供信息服务，而区块链信息服务提供者既包括提供区块链信息服务的主体或者节点，也涵盖为上述主体提供技术支持的机构或者组织，但《征求意见稿》并未对区块链技术或者系统进行明确定义。我们注意到，由于《征求意见稿》并未涉及“代币”（例如，比特币）问题，根据中国人民银行、网信办等七部门于2017年联合发布的《关于防范代币发行融资风险的公告》，在中国境内发行与交易代币的行为目前仍然被禁止。

根据《征求意见稿》，在中国境内从事区块链信息服务实行备案制，由网信办负责备案管理、公示及年度审核。此外，拟通过区块链从事新闻、出版、教育、医疗保健、药品和医疗器械等互联网信息服务的服务提供者，需要在备案前获得有关主管部门审核同意。

《征求意见稿》对区块链信息服务活动进行规范的同时，也对相关主体提出了更高的合规要求，我们将对此保持持续关注。

On October 19, 2018, the Cyberspace Administration of China (the “CAC”) issued the *Draft Administrative Rules on Block Chain Information Services* (the “Draft Rules”) for public comments; the formal enactment of the Draft Rules will constitute the first systematic regulation in the field of block chain in China. The block-chain information service regulated by the Draft Rules are services provided to the public through websites, applications, and other forms based on block-chain technology or system; and the block-chain information service provider is defined as any entity or node that provides block-chain information service to the public, as well as any institution or organization providing technical support to such entity or node. However, there is no explicit interpretation on the block-chain technology or system in the Draft Rules. We noted that the issuance and trading of tokens (e.g., Bitcoins) is not covered by the Draft Rules, therefore it is still prohibited within the territory of China pursuant to the *Notice on Preventing Fundraising Risks of Token Issuance* jointly released by the People’s Bank of China and other six central government authorities in 2017.

According to the Draft Rules, block-chain service providers who provide block-chain information services within the territory of China will be subject to CAC filing administration, public notification and annual review procedures. In addition, service providers in certain highly regulated fields (i.e., journalism, publishing, education, healthcare, pharmaceuticals and medical devices) shall obtain approvals from competent government authorities prior to their filings with CAC. The Draft Rules introduced a regulatory framework for the block-chain industry, setting higher compliance requirements for block-chain tech companies. We will continue to monitor and report the PRC regulatory developments in this fast growing area.

These updates are intended for information purpose only and are not a legal advice or a substitute for legal consultation for any particular case or circumstance. © Han Yi Law Offices All Rights Reserved.

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